

# 12-2297pr

*To be argued by:*  
D. B. KARRON

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United States Court of Appeals  
FOR THE SECOND CIRCUIT  
Docket No. 12-2297



DANIEL B. KARRON,

*Petitioner - Appellant,*

—v.—

UNITED STATES OF AMERICA,

*Respondent - Appellee.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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**APPENDIX Volume 8 FOR THE PETITIONER - APPELLANT**

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8647KAR3

Snowden - cross

1 THE COURT: But then you never got a proposed budget  
2 incorporating that \$80,000 request.

3 THE WITNESS: The change was more than \$80,000. It  
4 was well over 80,000.

5 THE COURT: You never got a proposed budget --

6 THE WITNESS: I got a request for a revised budget.  
7 So, I don't look at --

8 THE COURT: Let me ask a question.

9 THE WITNESS: OK.

10 THE COURT: Did you ever get a proposal in writing in  
11 a revised budget for an additional purchase of equipment over  
12 \$80,000?

13 THE WITNESS: Yes.

14 THE COURT: You did. Which budget did you get that  
15 in?

16 THE WITNESS: The next budget, so it came in November,  
17 so it probably had to be the October 20 budget in 2002. That  
18 would be the budget, because that would be the budget after.

19 THE COURT: That's Exhibit --

20 MR. RUBINSTEIN: 31, I believe, your Honor.

21 THE COURT: 35? 45?

22 THE WITNESS: No, there is another one for October, so  
23 I have to tell you which one.

24 MR. RUBINSTEIN: Are you looking for the October 2002,  
25 Ms. Snowden?

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Snowden - cross

1 THE WITNESS: Yes.

2 MR. RUBINSTEIN: That is Government Exhibit 32.

3 THE WITNESS: 32?

4 THE COURT: Which item are you referring to there?

5 THE WITNESS: The question was about the equipment.

6 And if you see the equipment category it's like \$303,400, so I  
7 would look in the one that's previous, the approved one. So,  
8 you know that that category it's well over \$80,000. So, we can  
9 look in any approved budget.

10 THE COURT: I'm looking here. I'm looking at Exhibit  
11 32.

12 THE WITNESS: Yes.

13 THE COURT: And the equipment numbers in Exhibit 32  
14 are \$303,400 in year one.

15 THE WITNESS: Right.

16 THE COURT: In year one. In year two it's \$133,000.

17 And I'm looking back to Exhibit 1, and the equipment is  
18 \$250,000, which is \$53,000 less than the amount in Exhibit 32,  
19 so in year two it's \$133,000, which is over \$120,000 higher  
20 than the amount in Exhibit 31.

21 THE WITNESS: Right. So it's over \$80,000. He has to  
22 get approval.

23 THE COURT: That's for year two.

24 THE WITNESS: We're only looking at year one right  
25 now, because --

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Snowden - cross

1 THE COURT: I'm looking at both of them, and you're  
2 not listening to me.

3 THE WITNESS: OK.

4 THE COURT: All right? I'm looking at Exhibit 32.

5 THE WITNESS: I'm looking at Exhibit 32.

6 THE COURT: That's \$303,400.

7 THE WITNESS: Yes.

8 THE COURT: And Exhibit 31 is \$250,000 in year one.

9 THE WITNESS: If you can bear with me, these are not  
10 in order. I need to get 31 so we can -- here we go.

11 THE COURT: 250,000, is that right?

12 THE WITNESS: Right, 250,000.

13 THE COURT: And this budget for August 1, 2002 is  
14 approved, isn't that right?

15 THE WITNESS: No.

16 THE COURT: No? It wasn't?

17 THE WITNESS: No.

18 THE COURT: Do I have to go back to Exhibit 30? Which  
19 one was approved.

20 THE WITNESS: It's amendment 2 that was --

21 THE COURT: Where do I see that?

22 THE WITNESS: Yeah, amendment 2 was the last approved  
23 budget.

24 DEPUTY COURT CLERK: Is that 22? Is that Government  
25 Exhibit 22?

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Snowden - cross

1 THE WITNESS: It said amendment 2 on the front of it.

2 THE COURT: I want to know what one was approved.

3 THE WITNESS: OK. The last approved budget was  
4 amendment 2.

5 THE COURT: The one that says submitted -- oh, come  
6 on.

7 THE WITNESS: Right, it's Exhibit 22.

8 DEPUTY COURT CLERK: Government 22.

9 THE COURT: This is January 17, 2002?

10 THE WITNESS: Yes.

11 THE COURT: And that had a figure or a number of  
12 \$110,000.

13 THE WITNESS: Yes.

14 THE COURT: So, what you are saying is that you should  
15 look at Exhibit 22 --

16 THE WITNESS: Yes.

17 THE COURT: -- and then compare Exhibit 22 with  
18 Exhibit 33 -- 32.

19 THE WITNESS: Well, August 2002 is Exhibit 31. That  
20 would be the first time that I received the budget that I  
21 questioned.

22 THE COURT: What I want to know is what test you  
23 applied on the request for additional equipment. Did you look  
24 to the prior approved budget?

25 THE WITNESS: Yes.

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Snowden - cross

1 THE COURT: So, you looked at Exhibit 22, is that  
2 correct?

3 THE WITNESS: Yes.

4 THE COURT: And you saw that the amount for equipment  
5 in year one was \$110,000.

6 THE WITNESS: Yes.

7 THE COURT: And then when you looked at Exhibit 32,  
8 which contained the request, you say --

9 THE WITNESS: No, first it's going to be Exhibit 31.

10 THE COURT: Exhibit 31.

11 THE WITNESS: Because that's August 2002. That will  
12 be the next budget.

13 THE COURT: So, that's the time that he made the  
14 request for the additional equipment?

15 THE WITNESS: Oh, you know what, you're totally right,  
16 because of this, it would be October -- you're right. 32.  
17 Sorry about that, because that would be in October. You're  
18 correct. Yes.

19 THE COURT: So, when you looked at Exhibit 32 -- or  
20 maybe when you looked at Exhibit 31 you looked at the  
21 difference between \$110,000 in Exhibit 22 the approved budget  
22 and the entries in Exhibit 32 of \$303,000.

23 THE WITNESS: Yes.

24 THE COURT: 110 to 303.

25 THE WITNESS: Yes.

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Snowden - cross

1 THE COURT: And that was over \$80,000?

2 THE WITNESS: Yes.

3 THE COURT: OK, all right. I just wanted to  
4 understand what process you used in determining that.

5 BY MR. RUBINSTEIN:

6 Q. Now, as far as fringe benefits, there was an approved  
7 budget, was there not, in November of 2001?

8       A. The original approved budget was dated September of 2001.  
9       That was incorporated into the document that CASI signed  
10      October 5, 2001.

11 Q. Wasn't there a revision of --

12 THE COURT: What exhibit are we dealing with here?

13 The jury has to follow this. What exhibit is it? They might

14 want to look at their books to see what you are talking about.

15 MR. RUBINSTEIN: I'm trying.

16 THE COURT: Is that the one exhibit 21?

17 THE WITNESS: No, Exhibit 21 is the first amendment,  
18 so it would have to be I guess 20.

19 THE COURT: Was the first amendment approved?

20 THE WITNESS: The original document was approved.

21 THE COURT: Was Exhibit 21 approved is what I'm asking  
22 you.

23 THE WITNESS: Exhibit 21 was approved.

24 THE COURT: And the original document was Exhibit 14?

25 THE WITNESS: I'm looking.

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Snowden - cross

1 THE COURT: I'm just asking. I don't know.

2 Q. Exhibit 21, ma'am, is the first revised --

3 THE COURT: Well, let's get an answer first to what  
4 was the original budget.

5 THE WITNESS: Exhibit 14.

6 THE COURT: All right, that's the original budget. Go  
7 on from there, Mr. Rubinstein. I turn it over to you.

8 Q. OK. Exhibit 21 was the first amended budget, correct?

9 A. Yes.

10 Q. And it is dated 10/24/01, signed by Dr. Karron 11/7/01,  
11 correct?

12 A. Yes.

13 Q. What were the amendments that were made to the budget at  
14 that time?

15 A. There was no changes to the budget at that time.

16 Q. That was the time that Gurfein's name was changed, correct?

17 A. Yes.

18 Q. The next one is 22. It's amendment number 2 dated January  
19 4, '02.

20 A. That's when my former supervisor signed it, yes.

21 Q. And in that amendment they're asking to reduce salaries  
22 from 375 to 325,000, right?

23 A. Yes.

24 Q. And they want to reduce fringe benefits from 127,500 to  
25 10,500, right?

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Snowden - cross

- 1 A. 110,500.
- 2 Q. And equipment they want to reduce 10,000, from 120 to
- 3 110,000.
- 4 A. Yes.
- 5 Q. And they want to increase subcontractors from 200,000 to
- 6 250,000.
- 7 A. Yes.
- 8 Q. And the net total is that the same amount of money is being
- 9 spent, correct, the \$800,000?
- 10 A. It stays within the 800,000 but it's over 10 percent change
- 11 in the annual year, so it's over \$80,000 of changes.
- 12 Q. Which category was changed by \$80,000?
- 13 A. It's not per category, it's per annual budget.
- 14 Q. When you talk about the 10 percent, you are talking about
- 15 an increase, correct?
- 16 A. No, the 10 percent is a change within the annual budget of
- 17 over 10 percent.
- 18 Q. Is it giving 10 percent more money than you had before?
- 19 A. The annual budget remains the same, but it's when you
- 20 change categories. You can make the changes but if it's
- 21 over -- for example, year one, if it was over \$80,000, if you
- 22 look at the changes that was requested it was well over
- 23 \$80,000, and that's why he had to request and get an approved
- 24 revised budget narrative. The changes have to be 10 percent or
- 25 greater within all categories.

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Snowden - cross

1 Q. Changes of more money spent in a particular category.

2 A. No, it could be more, it could be taking money away. It's  
3 changes in general, changes period.

4 Q. Any time you increase a category, you have to take away  
5 from another category in order to stay within the 800,000,  
6 correct?

7 A. Yes.

8 Q. Now, in that year they reduced the fringe benefits to  
9 \$110,000, correct?

10 A. Yes.

11 Q. And did you have any discussions -- when you had the  
12 kick-off on November 8, 2001, was there discussions about  
13 fringe benefits?

14 A. Not specifically.

15 Q. And did you ever have any discussion with Dr. Karron as to  
16 fringe benefits that you recall?

17 A. No.

18 Q. Did you ever have any conversations with Lee Gurfein as to  
19 fringe benefits?

20 A. No.

21 Q. Did you ever have any conversation with Joan Hayes as to  
22 fringe benefits?

23 A. No.

24 THE COURT: You are talking during the course of  
25 the --

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Snowden - cross

1 MR. RUBINSTEIN: During the course of the grant.

2 THE COURT: Is this before or after the kick-off?

3 Does it include at the kick-off, any discussion of fringe  
4 benefits?

5 THE WITNESS: No.

6 Q. At any time up until you last spoke to anybody from CASI,  
7 did you ever have any discussions about the fringe benefits?

8 A. No. There is regulations to regulate that.

9 Q. So when they lowered the fringe benefits for 2001 by  
10 \$17,000, they could have increased the salary by 17,000 at that  
11 time, correct?

12 A. There is reasons for why he did what he did in this  
13 exhibit.

14 THE COURT: But --

15 Q. I'm not talking about a particular exhibit, ma'am.

16 A. You're referring to --

17 THE COURT: We are talking about the 17,000.

18 MR. RUBINSTEIN: Talking about the 17,000.

19 THE WITNESS: Exhibit 22, 17,000, yeah.

20 Q. Right.

21 A. So, he deducted fringe benefits of 17,000 because personnel  
22 was decreased, so the fringe benefits went down.

23 Q. He could use the 17,000 someplace else, correct?

24 A. Yes, he can use it somewhere else.

25 Q. Now, you told us that you had these discussions with

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Snowden - cross

1 Gurfein about the rent, correct?

2 A. Yes.

3 Q. And that was early on in the grant?

4 A. The discussion was before the kick-off presentation and  
5 after the kick-off presentation, so in October and in November.

6 Q. 2001.

7 A. 2001.

8 Q. And then --

9 THE COURT: You had those with Gurfein.

10 THE WITNESS: With both Gurfein and Dr. Karron.

11 Q. And you told them -- and I think you testified that they  
12 double teamed you.

13 A. Yes.

14 MR. EVERDELL: Objection.

15 Q. They kept asking and calling about the same request about  
16 the rent, right?

17 A. They asked the same questions and received the same answer.

18 Q. Same answer was?

19 A. Same response from me is no.

20 Q. And then when Hayes called in the fall of 2002 --

21 THE COURT: I think it's after. Her testimony is that  
22 it occurred after the end of the fiscal year.

23 MR. RUBINSTEIN: Right, which is the fall of 2002,  
24 after October 1st.

25 THE COURT: It might be winter.

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Snowden - cross

1 Q. Your audit is due at the end of the year, right?

2 A. The audit is due 90 days after the end of award period.

3 Q. Right. After the first year?

4 A. Of year one, which ended September 30, 2002.

5 Q. And is it fair to say that Hayes called between September  
6 30, 2002 and the end of that year 2002 and asked you about the  
7 deductibility of the rent, correct?

8 A. It's fair to say that within that time period I was called  
9 by Joan Hayes and she did ask about the rent.

10 Q. And in your discussions with either Lee Gurfein or Dr.  
11 Karron about the deductibility of the rent did you suggest to  
12 either of them that they could increase Dr. Karron's salary and  
13 he could pay the rent out of an increase in salary?

14 A. No.

15 Q. I mean he could do anything he wants with his \$175,000 that  
16 he gets paid in the initial year, correct?

17 A. If he gets a paycheck, just like me and you when we get our  
18 paycheck, you can do whatever you want with it once you're paid  
19 for services rendered.

20 Q. And in fact you approved the second year budget for CASI,  
21 did you not?

22 A. Yes, I think funds for year two was approved.

23 Q. And did there come a time --

24 THE COURT: When would that have been?

25 THE WITNESS: I would have to look at the amendment,

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Snowden - cross

1 but we usually approve the funds for the following year months  
2 ahead of time, but they cannot spend that amount of money until  
3 their second year begins. So, for example, you could have  
4 approved it in June, but there would be a clause that says  
5 although we're obligating authorizing money June 1, it can't be  
6 spent until your next year starts, which would have been  
7 October 1. So, it's authorized ahead of time, but it can't be  
8 spent until the new year starts.

9 THE COURT: Thank you.

10 Q. Now, did there come a time that you learned that Dr. Karron  
11 had taken any loan from the funds, the ATP funds of \$75,000?

12 A. I heard -- I wasn't --

13 THE COURT: No. Did you --

14 THE WITNESS: Did I ever hear that?

15 THE COURT: In your capacity.

16 THE WITNESS: I heard that.

17 Q. And did you have any conversations with Dr. Karron about  
18 that \$75,000?

19 A. No.

20 THE COURT: When did you hear it?

21 THE WITNESS: From Joan Hayes.

22 THE COURT: What?

23 THE WITNESS: From Jones Hayes the auditor.

24 THE COURT: Approximately when did you hear it?

25 THE WITNESS: So it would be November 2002, within

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Snowden - cross

1 that time.

2 Q. November what?

3 A. During the audit, which would be any time after September  
4 2002, during the audit period of the independent CPA.

5 Q. Did you ever have a conversation with Dr. Karron telling  
6 him it was inappropriate to take that check of \$75,000? Did  
7 you ever tell him that?

8 A. I never talked to Dr. Karron about the check.

9 Q. And did you ever request of Dr. Karron that he return the  
10 funds to the project?

11 A. No.

12 Q. Did you speak to federal agents in Gaithersburg? That's  
13 where your office is, Gaithersburg?

14 A. I'm located in Gaithersburg, Maryland.

15 Q. Gaithersburg. And did you speak to agent Rachel, better  
16 known as Rachel Garrison?

17 A. Rachel.

18 Q. Rachel. Did you speak to letter?

19 A. Yes, I have spoken to her.

20 Q. Did you speak to her on September 8, 2003?

21 A. I spoke to her during that period. I don't know the exact  
22 date, but September 2003, yes.

23 Q. And when you spoke to her in September of 2003, that would  
24 be prior to the time you spoke to Joan Hayes about the \$75,000,  
25 correct?

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Snowden - cross

1 A. I spoke to Joan Hayes first.

2 Q. Didn't you tell us -- I'm sorry, you're right. I stand  
3 corrected. Thank you.

4 Did you tell agent Garrison that you told Dr. Karron  
5 that it was inappropriate for him to write himself a check for  
6 \$75,000 out of project funds to cover disallowed costs? On  
7 September 8, 2003.

8 A. I don't recall that conversation.

9 Q. Well, let me show you this document.

10 A. Sure.

11 Q. It's marked as Government Exhibit 3504-A. I direct your  
12 attention to the third paragraph there.

13 DEPUTY COURT CLERK: It's not in the book.

14 MR. RUBINSTEIN: These are government documents that  
15 are not in the book. Would your Honor instruct the jury about  
16 3500 material?

17 THE COURT: You want an instruction?

18 MR. RUBINSTEIN: About 3500 material, because the  
19 jurors don't have it in their book.

20 THE COURT: 3500 material is material which in this  
21 case the government turns over to the defense relating to all  
22 the documents that might possibly be in some way relevant to  
23 the testimony of the witness, and defense gets a copy of that  
24 to aid them in their examination of the witnesses. But they're  
25 not admitted in evidence, because although they may be able to

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Snowden - cross

1 use them for cross-examination purposes, they may not be  
2 admissible in evidence for a number of legal reasons. But they  
3 are -- but they -- but it is discovery that the government is  
4 obliged to provide to the defendants in all criminal cases.

5 (Continued on next page)

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864ZKAR4

Snowden - cross

1 Q. I show you that document, I show you that document, 3504 --

2 A. Yes.

3 Q. -- 8.

4 A. Uh-huh.

5 Q. And does that refresh your recollection first that you had

6 this conversation with --

7 A. It -- yes.

8 Q. Pardon?

9 THE COURT: With whom?

10 Q. With the agent would, was then known as Garrison, who I

11 understand she got married and she now is Orthwein?

12 A. No.

13 THE COURT: The question is --

14 Q. And I direct -- I'm sorry. All right. Does that refresh

15 your recollection of that conversation?

16 A. Yes, it does.

17 Q. On September 8th, 2003, correct?

18 A. Yes.

19 Q. And did you tell the agent that you spoke to Dr. Karron and

20 requested the return of funds, of the \$75,000?

21 A. I made the statement, yes. Because this wasn't part of his

22 salary. This was just money he took out of the grants as a

23 whole. This wasn't a salaried money. This was grant money

24 that was to be used for the direct project cost.

25 Q. You just said before that you never had conversations with

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864ZKAR4

Snowden - cross

1 Dr. Karron about this \$75,000, correct?

2 A. Yes. I said I didn't recall having a conversation with Dr.

3 Karron. Yes.

4 Q. Are you aware that the money was paid back in August?

5 THE COURT: Do you have a recollection now that you --

6 THE WITNESS: Yeah.

7 THE COURT: Did you have a conversation with him?

8 THE WITNESS: Now that I'm reading this, yes.

9 THE COURT: Not --

10 THE WITNESS: Yes, I --

11 THE COURT: You're not to answer the question based on  
12 what's in the document.

13 THE WITNESS: Okay.

14 THE COURT: The question is, do you now remember that  
15 in fact you did have a conversation with Dr. Karron?

16 THE WITNESS: Yes.

17 THE COURT: Regardless of the document?

18 THE WITNESS: Yes.

19 THE COURT: You do remember, okay.

20 Q. And --

21 THE COURT: Do you remember when that conversation  
22 was?

23 THE WITNESS: I would -- 2003.

24 THE COURT: All right.

25 Q. When in 2003?

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864ZKAR4

Snowden - cross

1 A. I don't recall.

2 Q. Did you -- was it the early part of 2003?

3 A. I don't recall.

4 Q. Was it before you sent the letter asking for an audit of  
5 CASI to the OIG?

6 A. No. I would not have known it before the audit.

7 Q. The audit by OIG?

8 THE COURT: What audit are you referring to, the audit  
9 by Miss Hayes or the audit by OIG?

10 THE WITNESS: The audit by Miss Hayes.

11 Q. So could you estimate when you had this alleged  
12 conversation with Dr. Karron?

13 A. No.

14 Q. Did you ask Dr. Karron for return of the funds?

15 A. Yes.

16 Q. And did Dr. Karron return the funds?

17 A. Not to my knowledge.

18 Q. Did you follow up on getting these funds returned?

19 A. During this time September 8th of 2003, I had, I had no  
20 contact with Dr. Karron.

21 Q. Did you report this to your superior, Ms. Goldstein?

22 A. She was aware of this, of the situation at hand.

23 Q. Did you report it to her, ma'am?

24 A. Yes.

25 Q. Is there any writing of you reporting this to Miss

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864ZKAR4                      Snowden - cross

1     Goldstein?

2     A.   No, there's no writing.   It's verbal conversation.

3     Q.   Is there any writing to the OIG which indicates that Dr.  
4     Karron took \$75,000 as personal money?

5                      THE COURT:   Is there any what?

6     Q.   Did you write anything to the OIG?

7     A.   I did not write anything to the OIG.   I don't recall  
8     writing anything to the OIG.

9     Q.   Now, you tell us that -- have you ever been to CASI's  
10    headquarters at 300 East 33rd Street?

11    A.   No.

12    Q.   Pardon?

13    A.   No.

14    Q.   So it's fair to say that you have no idea what kind of  
15    construction, if any, was done there, correct?

16    A.   Correct.

17    Q.   Now, under the terms of the budget, I direct your attention  
18    to the exhibit 35.   And this is a standard form, is it not, for  
19    each year of the budget?

20                      MR. EVERDELL:   Your Honor, I object.   This is not an  
21    approved budget, Judge.

22                      MR. RUBINSTEIN:   Pardon?

23                      THE COURT:   It's not a budget.

24                      MR. RUBINSTEIN:   It's a proposed budget.

25                      THE COURT:   You referred to it as the budget.

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864ZKAR4

Snowden - cross

1 MR. RUBINSTEIN: I'm sorry.

2 Q. Proposed budget. Is that correct, ma'am?

3 A. This is a proposed budget.

4 Q. And whose forms are these?

5 A. The forms that are attached are government forms.

6 Q. So they're supplied to the grants recipient, these forms,  
7 right?

8 A. They're part of your -- the package, yes. When the grant  
9 decides that they want to apply for proposal, they get a  
10 proposal kit, and these forms are incorporated into that kit.

11 Q. And do you want to turn to paragraph D where it says,  
12 equipment; see that, ma'am?

13 A. Yes.

14 Q. And reading from the fifth line from the bottom of that  
15 paragraph: ATP funds may, however, be used for construction of  
16 experimental research and development facilities to be located  
17 with a new or existing building, provided the equipment or  
18 facilities are essential for carrying out the project. If such  
19 costs are proposed, include it below and provide justification.  
20 Is that correct?

21 THE COURT: What page are you on?

22 MR. RUBINSTEIN: It's paragraph D, your Honor, of  
23 that -- these are -- I don't know if they're numbered or --  
24 it's paragraph D at the top of the page. It says "equipment".

25 Q. Is that correct, ma'am?

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Snowden - cross

1 A. I don't see -- I'm not following where this says that.  
2 Because if you look at the attachment, which is D, that's also  
3 incorporated into this.

4 THE COURT: Wait a minute. Let's make sure you're  
5 looking at what he wants you to be looking at.

6 THE WITNESS: Right.

7 Q. See at the top of the page it says D, in bold print,  
8 equipment?

9 A. Yes.

10 Q. Go down five lines from the bottom, where the sentence  
11 starts, ATP funds may, however, be used?

12 A. Okay, yes, I see that.

13 Q. You see that? For construction of experimental research  
14 and development facilities to be located with a new or existing  
15 building, provided the equipment or facilities are essential  
16 for carrying out the project, if such costs are proposed,  
17 include below provide justification?

18 A. Yes, I see that.

19 Q. You see that?

20 A. Yes.

21 Q. Is it fair to say that not all construction costs are not  
22 allowable under the grant, correct?

23 A. We don't -- if you read above that, funds may not be used  
24 for construction of new buildings or extensive renovations of  
25 extension -- of extending -- of existing laboratory buildings.

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Snowden - cross

- 1 Q. But they may be expended. And it says may, however;  
2 they're giving you an exception?
- 3 A. If costs are proposed, include and provide a justification.  
4 So if they were closed and they were approved, that's may --  
5 it -- they may be approved, they may not be approved. But in  
6 this instance, they're not a part of this proposal.
- 7 Q. Well, this proposal here is the wrong year, okay. That's  
8 2002, correct?
- 9 A. This is a proposed budget -- this right here is a form.  
10 This is a form. This has nothing to do with the proposal.  
11 This right here is a form that's used no matter what year  
12 you're in. This is a template.
- 13 Q. But that template --
- 14 A. Uh-huh, is always used.
- 15 Q. -- is provided by the government?
- 16 A. Yes.
- 17 Q. That happens to be for 2002, not 2001, correct?
- 18 A. No, no. It's the same. No. It's the same template used  
19 for 2001, 2002, 2003. It's an existing template.
- 20 Q. Right. But it's filled in. There are lines filled in?
- 21 A. It's filled in for the proposed budget of 12/24/02. It's  
22 filled in. But this is the same template that would be for  
23 2000, 2001, 2002, and 2003. It's a template that's used as  
24 part of the proposal package, no matter what years it's in.
- 25 Q. The template does not include, ma'am --

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Snowden - cross

1 A. Excuse me?

2 Q. The numbers that are filled in, right, grantee, right;  
3 underneath you see under D, it says methodology? Those numbers  
4 are not part of a template, are they, adding up to \$95,900?  
5 That's not a template.

6 THE COURT: Where are you reading?

7 MR. RUBINSTEIN: I'm on the same page.

8 THE COURT: Locate her the page.

9 MR. RUBINSTEIN: The same page.

10 A. But when you ask about this, you asked me about the wording  
11 within D, equipment. You didn't ask me about the numbers on  
12 there. You asked me about the wording and how they were  
13 interpreted. And I just commented on the wording and told you  
14 that these, this wording is templated for all years in all the,  
15 in all the awards as part of your kit.

16 Q. Did you discuss this at the kickoff, this paragraph, at the  
17 kickoff on November 8th, 2001?

18 A. There was no need for discussion. There was no  
19 construction.

20 THE COURT: I'm lost here, Mr. Rubinstein. Exhibit D  
21 from, you've been reading from.

22 MR. RUBINSTEIN: No, no. It's not exhibit D, your  
23 Honor. It's paragraph D.

24 THE COURT: Paragraph D, entitled equipment.

25 THE WITNESS: Yes.

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Snowden - cross

1 THE COURT: Exhibit.

2 MR. RUBINSTEIN: 35.

3 THE COURT: 35.

4 MR. RUBINSTEIN: Right.

5 THE COURT: And then after the, what seems to be form

6 language in the form, there is a total underneath of \$231,714.

7 But up above it says, see attached exhibit. And I don't see

8 the attached exhibit. So I can't determine and make any

9 determination what it is you're talking about.

10 MR. RUBINSTEIN: Judge, my question only related to

11 the fact that the witness insisted that this was all a

12 template, and I want to show it's not just a template, it's

13 information in -- in -- that is in addition to the template

14 letter. That's all the purpose of the question was.

15 THE COURT: I'm not sure you have established that.

16 So let me understand what you're saying. Is there a dispute

17 between you and the witness as to what appears in the first

18 full paragraph there?

19 MR. RUBINSTEIN: We agree on --

20 THE COURT: Before we get to item methodology

21 computation and cost?

22 MR. RUBINSTEIN: We agree that the words that I spoke

23 are in the document that she has.

24 Q. We're in agreement, correct, Ms. Snowden?

25 THE COURT: Yes.

864ZKAR4

Snowden - cross

1 Q. I read correctly from that document?

2 A. I agree that you read them correctly from the document.

3 Q. Thank you.

4 THE COURT: And that that paragraph, as I understand  
5 it, is part of the government form that is submitted --

6 THE WITNESS: Yes.

7 THE COURT: -- to the grantee to fill out.

8 THE WITNESS: Yes.

9 THE COURT: So is there any dispute about that, Mr.  
10 Rubinstein? I just --

11 MR. RUBINSTEIN: Not at all.

12 THE COURT: What?

13 MR. RUBINSTEIN: None at all. I just wanted to  
14 show --

15 THE COURT: I don't see any dispute between you and  
16 the witness, so please go ahead.

17 BY MR. RUBINSTEIN:

18 Q. Now Dr. Karron, did there come a time he requested that --  
19 can I have that document, back, ma'am, that 3504 that I gave  
20 you?

21 (Handing)

22 Q. Now, in these discussions that you had with Dr. Karron  
23 about, rent and utilities aside, did you say anything else  
24 other than no, when he asked you about the grant money covering  
25 rent and utilities?

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864ZKAR4

Snowden - cross

- 1 A. I said no.
- 2 Q. Did you discuss this with Miss Goldstein, the supervisor --
- 3 A. Yes.
- 4 Q. -- the fact that Ms. Goldstein advised you that if CASI got
- 5 commercial space and if they made a lease in the name of the
- 6 grant ATP, DMT, that that would be an acceptable expense?
- 7 A. No, it's not an acceptable expense.
- 8 Q. No, no. Did you have that discussion with Ms. Goldstein?
- 9 Did you -- did Ms. Goldstein tell you that?
- 10 A. No.
- 11 Q. Did you ever tell Dr. Karron that, why don't you increase
- 12 your salary and pay it out of your salary, this rent figure?
- 13 A. Never.
- 14 Q. Did Dr. Karron advise you at any time that the rent monies
- 15 that were being paid were being paid for a time period before
- 16 the ATP grant, and it was back rent owed?
- 17 A. No.
- 18 Q. So it was your understanding, when you spoke to Dr. Karron,
- 19 that he was talking about current rent while he was receiving
- 20 funds from ATP?
- 21 A. It was to my understanding that he was asking to pay for
- 22 current, current -- use current funds to pay for rent, and the
- 23 current funds were direct costs. You can not use -- you can't
- 24 use ATP money. Once he rendered services and he had a pay
- 25 check at the end of the day, he could do whatever he wanted.

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Snowden - cross

1 But he could not charge this grant for direct as a -- rent as  
2 direct cost of this project.

3 Q. Is it a fact that, that funds, that pre-grant -- in other  
4 words, this grant started October 1st, 2001?

5 A. Uh-huh.

6 Q. That there were startup costs anticipated prior to the time  
7 that the grant was actually formally approved, correct?

8 A. No.

9 Q. Well, isn't it a fact that a grantee can pay pre-grant  
10 expenses related to the grant, but that there is no obligation  
11 for NIST to repay those monies?

12 MR. EVERDELL: Objection.

13 THE COURT: Objection sustained to the form of the  
14 question.

15 Q. Is it a fact, ma'am, that pre-grant expenses, in other  
16 words, in this case expenses incurred prior to October 1st,  
17 2001, that were for items or materials related to the ATP  
18 grant, are allowed to be charged to the grant?

19 A. No.

20 Q. What if you buy a piece of equipment on September 30th,  
21 2001 for the grant's use, it gets delivered on October 2, 2001,  
22 you pay for it on October 3, 2001, is that expense an allowable  
23 expense or non-allowable expense?

24 A. Non-allowable. You don't even have a grant until  
25 October 1, 2001. And according to the funding limitation

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Snowden - cross

1 clause that's incorporated into this grant, funds can only be  
2 expended during a period of time. And the period of time for  
3 this particular grant was starting October 1, 2001 through  
4 September 30th, 2002. So that's when funds are to be expended,  
5 and that is all documented as part of special work conditions,  
6 which supersede other regulations incorporated to this grant.

7 Q. Are you familiar with Federal Register Volume 66, November  
8 1M?

9 THE COURT: Have you ever heard of that?

10 THE WITNESS: I mean, I need a title. I mean, he  
11 could at least give me a title or a CFR, some kind of  
12 federal -- some guidelines.

13 Q. Well, did you send an e-mail on August 17th, 2006 about  
14 5:53 p.m. to Agent Ondrik and c.c. it to Marilyn Goldstein?

15 A. There's a possibility. I don't recall. This is --

16 Q. Let me show you what's been --

17 A. Okay.

18 Q. -- marked as government exhibit 3504/C.

19 By the way, your e-mail address is Hope.Snowden@NIST.  
20 Gov, correct?

21 A. Yes, that's correct.

22 THE COURT: You want to show --

23 MR. EVERDELL: She's reading.

24 THE COURT: Show -- all right, good.

25 A. Okay. Okay.

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864ZKAR4                      Snowden - cross

1     Q.    Is that your e-mail, ma'am?

2     A.    This is my e-mail.

3     Q.    And are the words contained therein, words that you sent in  
4     that e-mail?

5     A.    These are words that I sent in my e-mail.

6     Q.    May I have the document, please, ma'am.

7                (Handing)

8     Q.    Did you, in that e-mail, say costs -- write:  Costs  
9     incurred before the project, Federal Register, January 2, 2001,  
10    Volume 66, Volume 1M. states, preaward activities, applicants  
11    or institutions who incur any cost prior to an award being  
12    made, do so solely at their own risk of not being reimbursed by  
13    the government.  Notwithstanding any verbal assurance that may  
14    have been provided, there is no obligation on the part of NIST  
15    to cover the preaward cost.  This notice is applicable to this  
16    award.

17                Did you --

18                THE COURT:  Anything else?  There does seem to be  
19    another --

20    A.    Is there a question with that?  Because I wrote that and  
21    under there, up underneath there it also says, we do not pay  
22    preaward costs, which are considered sunk costs.

23    Q.    Sunk costs --

24                THE COURT:  That's s-u-n-k cost?

25                THE WITNESS:  Yes, yes.

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864ZKAR4

Snowden - cross

1 Q. And, in fact, what I just read says that you do, on  
2 occasion, pay pre-grant costs, correct?

3 A. It says that we, the government, has no -- we have no  
4 obligation to pay. So it doesn't say that we pay it. It says  
5 we --

6 Q. Does it say you don't pay it?

7 A. It says we don't have any obligation.

8 Q. Does it say you do not pay it; yes or no?

9 A. No. But the sentence under that says that we don't pay it,  
10 the sentence right under that.

11 Q. You know what sunk cost is, ma'am?

12 A. To -- we interpret it as pre-award cost, cost that you  
13 incurred before you were given a proposal. That's how --  
14 that's the interpretation.

15 Q. That's just your interpretation?

16 A. That's the ATP interpretation, and it's also located in a  
17 regulation and it says sunk costs.

18 Q. And is it fact that sunk costs is costs that you already  
19 paid out of your pocket prior to the time that the grant  
20 starts, and that there's -- isn't that correct?

21 A. Sunk costs is any cost that you incur prior to a proposal  
22 or contract or what have you.

23 THE COURT: Proposal being approved.

24 THE WITNESS: Right. It's unapproved cost. Because  
25 you really don't even know if you're going to get the proposal,

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Snowden - cross

1 so you are just spending money at your own risk if you're ever  
2 going to receive it.

3 THE COURT: Go ahead.

4 Q. When was Dr. Karron notified, officially, that he received  
5 this award, that CASI received this award?

6 THE COURT: Do you know of your own knowledge?

7 THE WITNESS: My own knowledge is that it was sent out  
8 probably around very the end of September. So he should have  
9 gotten it October 1st, 2001.

10 Q. And when is a decision made by ATP as to who is going to be  
11 a recipient of an award?

12 A. Depends on when the proposals are being read, and then  
13 decisions are made later on.

14 But no proposer can ever know that they receive a  
15 grant until appropriations are approved. And appropriations is  
16 the money that we're given for the these competitions. So,  
17 basically, you go through a competition, you go through  
18 everything, and you get -- you get all your clearances, and  
19 appropriations -- Congress can still say at the end of the day,  
20 you've done all this work and we don't have money. So until  
21 you receive that paper document in your hand, that's the only  
22 notification that you get knowing that you received this award.  
23 You get no other notification, 'cause we don't know till the  
24 last minute. Everything is sitting out there waiting, and it's  
25 signed. It cannot be mailed until we are notified we can mail

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Snowden - cross

1 out these documents.

2 Q. Don't you have a \$60 million appropriation in 19, in 2001  
3 to give to people who receive awards?

4 A. I don't know how much was allocated in 2001.

5 Q. Are you telling this jury that people go through all kinds  
6 of submissions and at the end of the day there's no money  
7 there; is that what you're telling this jury?

8 A. No. I'm telling the jury that we receive over 300 or more  
9 proposals, and that at the end of the day nobody knows. We  
10 have to get notification. The person who is going to receive  
11 that award does not know until he receives the paper document.  
12 He doesn't -- he, she, the company does not know. Until you  
13 receive something in the mail, you're one of -- you could be  
14 one of a million applicants. You don't know until you receive  
15 that document in the mail, so you're just, you're unaware. The  
16 money --

17 Q. What if I have a friend at ATP and I called my friend and I  
18 say, did I get the award?

19 THE COURT: Objection sustained to the form of the  
20 question.

21 MR. EVERDELL: Objection.

22 Q. Do you know whether or not --

23 THE COURT: It's a hypothetical question. Let's --

24 Q. Do you know whether or not Dr. Karron has a personal  
25 relationship with Mark Stanley?

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Snowden - cross

1 A. Not --

2 THE COURT: Objection -- do you know?

3 A. Not to my knowledge. I have no idea.

4 THE COURT: All right, okay.

5 Q. You don't know one way or the other?

6 A. No.

7 Q. Correct? Now --

8 THE COURT: Have you got any other questions?

9 MR. RUBINSTEIN: Yes, your Honor.

10 THE COURT: Have you got much more?

11 MR. RUBINSTEIN: Yes, a different topic.

12 THE COURT: What?

13 MR. RUBINSTEIN: Different topic.

14 THE COURT: Have you got much more?

15 MR. RUBINSTEIN: I think I have enough, Judge, that if  
16 your Honor wants to break for lunch now for everybody, I think  
17 it would be appropriate time.

18 THE COURT: I think we better break and come back at  
19 five minutes after two.

20 (Jury exits the courtroom)

21 THE COURT: You can step down.

22 THE WITNESS: Thank you.

23 THE COURT: Is there anything to take up?

24 MR. KWOK: Not from the government at this moment.

25 MR. RUBINSTEIN: Not from the defense, your Honor.

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Snowden - cross

1 THE COURT: How much longer are you going to be, Mr.  
2 Rubinstein?

3 MR. RUBINSTEIN: I don't think I should be more than a  
4 half-hour, Judge, tops.

5 THE COURT: Redirect?

6 MR. EVERDELL: Your Honor, I have a few things to  
7 cover, I think to clarify. Maybe 15 minutes. I'll try to keep  
8 it as brief as possible.

9 THE COURT: All right. Well, we may have to run a  
10 little late today.

11 MR. EVERDELL: I'll try to be as brief as I can.

12 THE COURT: All right. Thank you.

13 (Luncheon recess)

14 A F T E R N O O N S E S S I O N

15 2:05 p.m.

16 THE COURT: Good afternoon. Okay, is Robert here?

17 Five after two.

18 MR. RUBINSTEIN: Your Honor, I have a housekeeping  
19 matter that I have to address the Court on.

20 THE COURT: Yes, sir.

21 MR. RUBINSTEIN: I am an attorney in a 62 defendant  
22 case in the Eastern District of New York, and a plea has been  
23 worked out with the government that if 52 of the 62, I think  
24 the number is, defendants plead guilty, they're going to be  
25 afforded three points reduction for global plea.

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864ZKAR4

Snowden - cross

1           They have scheduled my plea for 5:00 o'clock this  
2   afternoon in the Eastern District. I want to ask your Honor if  
3   it's possible for me to be -- for us to break at 4:00 o'clock,  
4   so that I could handle the plea there.

5           THE COURT: I don't see a problem. I might go a  
6   couple minutes after, but let's see if we can get these people  
7   in. Who is it before?

8           MR. RUBINSTEIN: It's before Magistrate Judge Levy.  
9   It's actually, the case is before Judge Weinstein, but he has  
10   the plea taken by a magistrate judge.

11          THE COURT: I see.

12          MR. RUBINSTEIN: Who doesn't like to stay past 5:00  
13   o'clock.

14          THE COURT: Doesn't, the magistrate Judge doesn't?

15          MR. RUBINSTEIN: I heard what you said about the  
16   probation departments, Judge. I'm not going to say anything  
17   about the magistrate judges.

18          THE COURT: Well, where is Robert? Not here. I'll go  
19   in and see. I'll do it. I'll see if they're ready.

20          THE DEPUTY CLERK: I'll check.

21          THE COURT: The jury is coming in.

22          (Jury entering)

23          THE COURT: Please be seated. Please proceed, Mr.  
24   Rubinstein. Oh, the witness, the witness.

25          MR. RUBINSTEIN: I could start without her, Judge.

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864ZKAR4

Snowden - cross

1 (Witness resuming the witness stand)

2 THE COURT: Mr. Rubinstein.

3 MR. RUBINSTEIN: Yes.

4 Q. Good afternoon, Ms. Snowden.

5 A. Good afternoon.

6 Q. Earlier today the government discussed with you exhibit 30  
7 which is a -- which is the letter from -- memorandum from your  
8 boss, Marilyn Goldstein, dated August 16th, 2003, correct?

9 A. No. It's a memorandum for Marilyn, not from her.

10 Q. Okay. For her?

11 A. Uh-huh.

12 Q. And, in fact, the letter provides that there are five  
13 budget revisions?

14 A. It says there's quite a few budget revisions.

15 Q. And, in fact, all of those budget revisions apply to the  
16 first year of the grants, is that correct?

17 A. No.

18 Q. Does it say at the top line in five communications, copies  
19 attached. CASI has requested ATP approve the revised budget  
20 listing actual costs for year one.

21 Isn't that what they say, all these revisions relate  
22 to the first year?

23 A. No. I mean, the first question you asked me were are the  
24 revisions in year one and I told you no.

25 THE COURT: Are you asking whether the memorandum says

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Snowden - cross

1 that or are you asking the witness for her recollection of the  
2 budgets?

3 Q. You testified on direct examination --

4 THE COURT: I just want to know which you're asking  
5 because it's not clear.

6 Q. I'm asking -- isn't it a fact, ma'am, that the five  
7 revisions submitted on behalf of CASI dated August 1st, 2002,  
8 October 20th, 2002, December 2nd, 2002, December 20th, 2002,  
9 and February 25th, 2003, all relate to the first year of the  
10 grants?

11 A. No, they don't. The first year of the grant ended  
12 September 30th, 2002. These exceed that date.

13 Q. Are you familiar with the budget revisions?

14 A. Yes, I am.

15 Q. And are you familiar with the -- that you can revise a  
16 budget after the first year?

17 A. Yes, you can revise a budget after the first year.

18 Q. So isn't it a fact that this memorandum talks about  
19 revising the budget for the first year?

20 A. No. It says has -- after these dates, it says has  
21 indicated on the last four of the submissions that the first  
22 year's cost lists are actual.

23 So, basically, it's stating that these budgets  
24 represent revisions and there were revisions made to year one,  
25 but year one was over. So they should have been actual

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Snowden - cross

1 numbers. That's what this is saying.

2 Q. If CASI had submitted one budget revision instead of five  
3 with five different numbers --

4 THE COURT: No hypotheticals, please.

5 MR. RUBINSTEIN: Okay. You're right, Judge.

6 Q. So it's your testimony that the five dates when budget  
7 revisions were submitted, they were submitted for year other  
8 than -- ending October -- September 1st, 2002?

9 MR. EVERDELL: Objection.

10 THE COURT: I think her testimony speaks for itself  
11 and I'm going to sustain the objection. Let's have another  
12 question.

13 Q. What year was -- the revised budget for February 25th, that  
14 was submitted February 25th 2003, what year was that revision  
15 request for?

16 A. This revision request was still unapproved budget that had  
17 started in October 20th of 2002. But I continuously receive  
18 revised budgets within short periods of time that were never  
19 ever approved. So it was just, he'd send me one and then a  
20 week or later I get another one. But they all started from  
21 original, the original October 20th. So it was -- one  
22 originated, I had questions, then he revised them and sent me  
23 another budget. I had other questions because there was other  
24 changes, and so it continued on, until this ward was suspended.

25 Q. The award was suspended on June 27th, '03, correct?

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Snowden - cross

1 A. June -- yes.

2 Q. The question is, ma'am, the year that these requests for  
3 budget revisions, what year are these requests for, the first  
4 year, the second year, the third year of the grant?

5 THE COURT: Mr --

6 MR. EVERDELL: Objection.

7 THE COURT: Mr -- the budget covers three years. Each  
8 budget covers three years.

9 MR. RUBINSTEIN: The revision --

10 THE COURT: It's the grant budget covers three years.  
11 If you want to frame your question right, frame it with respect  
12 to the first year, and ask her a questions about the first year  
13 and whether there were revisions there. There are revisions in  
14 other years as well as the first year, in order to end up with  
15 a total amount of the grant.

16 Q. You can't move money between years, can you, in the  
17 budgets?

18 A. When one -- when one year ends; for example, if year one  
19 ends or it's getting ready to end, you can request -- if all  
20 the money wasn't expended within that year, you can request to  
21 carry over money to the second year. So that means your year  
22 one would have all your actuals, and then you would take the  
23 money that you're not going to use and you can carry it over  
24 into year two.

25 But when -- if year one had totally totally ended, you

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1 can not carry any of that, those funds over, none. So if you  
2 request for revision before that year ends, and say I see that  
3 it's now the end of my period, I'm not going to spend \$100,000,  
4 I would like to revise and carry it over to year two, you're  
5 allowed to do that. But once the year ends, it's ended, you  
6 can't have any revisions once the date has expired.

7 Q. Year one ended September 30th, 2002, correct?

8 A. Yes.

9 Q. Budget was approved for the year starting October 1st, 2002  
10 ending September 30th, 2003, correct?

11 A. No. There wasn't another approved budget. The last  
12 approved budget, which was amendment to, was still in effect.  
13 There was no other budgets approved.

14 What happened -- what you're talking about is that we  
15 obligated money for the second year during that funding period.

16 Q. Right.

17 A. Under --

18 Q. You gave that money to CASI for the second year, \$600,000  
19 and change, correct?

20 A. We authorized that money starting October 1st, 2002 for the  
21 purposes of spending it according to the revised budget of  
22 amendment two.

23 Q. Were any of the five revisions referred to in government  
24 exhibit 30 related to year two?

25 MR. EVERDELL: Objection.

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1 THE COURT: Look through them. Look through them and  
2 see if there are any revisions to year two. You can compare it  
3 what, 21 to --

4 THE WITNESS: Yeah, 32 starts year two, that's going  
5 to be within that period, exhibit 32.

6 THE COURT: What were you comparing to do -- to  
7 determine this?

8 THE DEPUTY CLERK: I would have to look at exhibit 32  
9 because year two started and the original budget.

10 THE COURT: All right. And what's -- original budget  
11 is exhibit 21; is that the one you're talking about?

12 THE WITNESS: No, there's no budget in 21, so let's  
13 look at --

14 THE COURT: What exhibit number is it?

15 THE WITNESS: If you look at exhibit 14.

16 THE COURT: All right.

17 THE WITNESS: That's the original budget.

18 THE COURT: All right. 14 and 32, is that correct?

19 THE WITNESS: Yes, I can, I can do a comparison there.

20 THE COURT: Any changes in the second year?

21 THE WITNESS: Yes.

22 THE COURT: Tell us what they are.

23 THE WITNESS: The personnel -- there were personnel  
24 changes from the original to the, the requested revised  
25 personnel changes. The personnel went down. Your fringe

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1 benefits went down in the revised, proposed revised budget that  
2 was not approved. Travel decreased in the proposed revised  
3 budget that was not approved. Equipment increased in the  
4 proposed revised budget that was not approved.

5 You have money that is incorporated for material and  
6 supplies. In the original budget there was zero for material  
7 and supplies. Then you have your subcontractor. Your  
8 subcontractor, it decreased in the revised unapproved budget.

9 The other changed. It increased in the unapproved  
10 budget. And that's it. So those changes for every category,  
11 there were proposed changes for every category.

12 Q. And they were based upon the actuals, correct?

13 A. They couldn't be based on the actuals. Because if you look  
14 at -- if you compare year one to year one, year one should have  
15 been actuals, not year two. Year one and year one, they have  
16 changes too.

17 Q. You received the audit in June of 2003?

18 A. Yes.

19 Q. And do you know when Dr. Karron or CASI received a copy of  
20 that audit from Joan Hayes?

21 A. No.

22 Q. Did you have a discussion, prior to receiving the audit,  
23 with Dr. Karron as to the lateness of the submission of the  
24 audit?

25 A. Yes, I did have a discussion with him about the lateness of

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Snowden - cross

1 the submission of the audit.

2 Q. Because the audit was due within 90 days after the end of

3 the first year, correct?

4 A. Yes.

5 Q. That would take you till the end, December 31st, 2002,

6 correct?

7 A. Yes.

8 Q. And they had received an extension of that, correct?

9 A. Yes. They asked for a 60 day extension.

10 Q. And they got 60 day extension?

11 A. Yes.

12 Q. And you still hadn't received the budget after 60 days,

13 correct?

14 A. Yes.

15 Q. And because that would take you till the beginning of

16 March, right?

17 A. End of February, beginning of March, yes.

18 Q. And in fact that Dr. Karron asked you if he could fire

19 Hayes?

20 A. He never asked me could he fire Joan Hayes.

21 Q. Isn't the expense of the audit a deductible expense from

22 NIST?

23 A. When you propose your budget, you incorporate -- there is a

24 price associated with the audit under other for years one and

25 year three, and that's in your original proposed budget, and

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Snowden - cross

1 that was approved.

2 Q. So that's an authorized expense --

3 A. It's authorized.

4 Q. -- on the budget, right?

5 A. Yes, it is.

6 Q. And did you tell Dr. Karron, we paid for the budget for the  
7 audit and we want it?

8 A. I asked, after 60 days --

9 Q. Did you tell Dr. Karron -- you hear the question? Did you  
10 tell Dr. Karron --

11 A. I'm answering your question. After 60 days --

12 THE COURT: Wait, let him ask the question.

13 THE WITNESS: Okay, all right.

14 Q. You paid for the budget for the audit and you want it; did  
15 you say that, yes or no?

16 A. Yes.

17 Q. And, in fact, monies had been spent and give to Joan Hayes  
18 for the audit, correct?

19 A. I don't know what was done within his corporation.

20 Q. Now, and in fact the grant was suspended because of the  
21 absence of the cofunding portion, correct?

22 A. It was suspended because of noncompliance, which  
23 corresponded with the required cost share that was not paid.

24 Q. Now, did you have discussion with Dr. Karron about the use  
25 of equipment as a portion of the cost share contribution?

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Snowden - cross

1 A. No.

2 Q. Did you have discussions with Marilyn Goldstein as to the  
3 costs share contribution of preowned equipment?

4 A. No.

5 Q. I show you what's been marked in evidence, I'm sorry, is  
6 marked for identification as Government's 3504/M and ask you if  
7 you recognize this document, ma'am?

8 A. Yes, I recognize this document.

9 Q. Can I have it back, please?

10 A. Sure.

11 Q. Thank you.

12 And this is a letter that's written to Dr. Karron?

13 A. Yes.

14 Q. On July 25th, 2003, right?

15 A. Yes.

16 Q. From your boss, Marilyn Goldstein?

17 A. From my former supervisor, yes, it is.

18 Q. Now, by the way, did you have contact with Dr. Karron after  
19 the grant was suspended on June 27th, 2003?

20 A. I probably had limited contact with him after, after it was  
21 suspended.

22 Q. Now, government exhibit -- had you had contact with this  
23 Bob Benedict before the grant was suspended?

24 A. Yes, I think I did. I'm -- I don't recall.

25 Q. Well, in fact, in Government's 48 is the letter that he

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1     wrote on August 13th, 2003?

2     A.    Okay.

3     Q.    Correct?

4     A.    Yes.

5     Q.    And there were -- you testified as to revisions in the  
6     financial status reports; recall that?

7     A.    Yes.

8     Q.    And those reports, you're supposed to submit a financial  
9     status report every quarter, every three months?

10    A.    Yes.

11    Q.    And, in fact, CASI had submitted such reports, correct?

12    A.    Yes.

13    Q.    And who receives those reports?

14    A.    I do.

15    Q.    And how much was -- and those are our exhibits 41, the  
16    original report?

17                THE COURT:    Start with 40 to 46, is that correct?

18                MR. RUBINSTEIN:    Yeah.

19                THE COURT:    The revisions are 48, 41A, 42A.

20    Q.    The first -- in exhibit 40, do you have that, ma'am?

21    A.    Yes.

22    Q.    They show the -- and we're talking about, I, the cost share  
23    outlay?

24    A.    Yes.

25    Q.    The first year it's reported at \$12,320?

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864ZKAR4

Snowden - cross

- 1 A. First quarter is reported.
- 2 Q. First quarter, rather?
- 3 A. Yes.
- 4 Q. And then the second line on that -- the third line on that
- 5 page shows you total so far, correct? That's what was the
- 6 amount that was paid for the year?
- 7 A. Would you tell me what number --
- 8 Q. There are three columns.
- 9 A. There is three columns. Is it a, b, c?
- 10 Q. Right. No, there's -- my eyes aren't so good. You see it
- 11 says, previous report, this period cumulative report?
- 12 A. Uh-huh, yes.
- 13 Q. So that because this was the first report, the same number
- 14 \$12,320 is this report, and the total amount they're claiming
- 15 cumulative is 12 --
- 16 A. Yes.
- 17 Q. -- 320. And you reviewed that report?
- 18 A. Yes.
- 19 Q. How long after you received it did you, would you say you
- 20 reviewed it? You don't have to give me a specific date.
- 21 A. Maybe within 30 days.
- 22 Q. Okay.
- 23 A. Because the report is for the quarter ending December 31st,
- 24 2001, the date at the bottom says January 10th. So you gave
- 25 time that it was mailed in. So we have -- probably within 30

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Snowden - cross

1 days of when it came into my office.

2 Q. Okay. Now, in government exhibit 41, that's the original  
3 financial status report that's submitted for the second  
4 quarter?

5 A. Yes.

6 Q. And that is on line I, they have \$9,582.58, which was  
7 previously reported, correct?

8 A. That -- well, that's an incorrect number.

9 Q. I agree with you, but that's what's reported?

10 A. On this revised budget --

11 Q. This is not revised. This is the original.

12 A. 41.

13 Q. The second quarter?

14 THE COURT: 41?

15 THE WITNESS: Right.

16 Q. 41?

17 A. Yes.

18 Q. They say that there was --

19 A. Uh-huh.

20 Q. -- 9,582.58, right, that was reported what we now know as  
21 government exhibit 40?

22 A. Yes.

23 Q. When in fact there it was actually \$12,320 that should have  
24 been there?

25 A. Yes.

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Snowden - cross

- 1 Q. And then they showed an additional 8,213.64, right?
- 2 A. For the current period.
- 3 Q. The current period. Then they total the 9,000 and 8,000
- 4 and they get 17,796.22, correct?
- 5 A. Yes.
- 6 Q. And that number is wrong, right; correct?
- 7 A. I have to do the math.
- 8 Q. I mean if the 12 -- no. If it should have been 12,000 for
- 9 the --
- 10 A. Ultimately, yes.
- 11 Q. -- first quarter, then that number would be wrong?
- 12 A. Yes.
- 13 Q. Okay. Nobody commented on that to CASI, correct, that
- 14 there was, these reports, these financial status reports were
- 15 inconsistent and inaccurate?
- 16 A. Yes, there were comments on it.
- 17 Q. Where were comments made?
- 18 A. Excuse me?
- 19 Q. Where were comments made?
- 20 A. Probably verbal. They were probably -- the -- what I
- 21 usually do if there is a budget that comes in that's wrong,
- 22 I'll just give the company a call and say, your numbers are
- 23 wrong, please revise and resend your document.
- 24 THE COURT: Did you make that call?
- 25 THE WITNESS: Yes.

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864ZKAR4

Snowden - cross

1 THE COURT: Are you sure you made that call?

2 THE WITNESS: Yes.

3 THE COURT: Yourself?

4 THE WITNESS: Yes.

5 THE COURT: You told them the first quarter was wrong?

6 THE WITNESS: Yes, even -- one -- I think the numbers  
7 are -- the dates were wrong too. Yes, I'm sure I made the  
8 call.

9 Q. Who did you speak to?

10 A. Usually when I would call the doctor -- I probably --  
11 usually I would speak to Lee Gurfein.

12 Q. And did you memorialize that in any way with an e-mail that  
13 you had made that call?

14 A. No.

15 Q. Did you put anything in your government file to indicate  
16 that you had made the call because you noticed these numbers  
17 were wrong?

18 A. The practice is that I would put this document in the file,  
19 make a note to it, and then when a new form came in, I would  
20 just discard the old form and put in the correct form.

21 Q. Well, did a new form come in?

22 A. This -- a new form, a new form came in.

23 Q. How long after you claim you made this call?

24 A. Well, this one is a revision. I'm not getting the  
25 question.

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Snowden - cross

1 THE COURT: Neither of these are revisions --

2 THE WITNESS: These are the original documents, okay.

3 THE COURT: 2000.

4 THE WITNESS: Right.

5 THE COURT: One in January and one in, apparently,

6 April 2002.

7 THE WITNESS: So there -- I don't see a revision here,

8 that it was ever revised.

9 Q. As a matter of fact, the next quarter, which is

10 government's exhibit 42 --

11 A. Uh-huh.

12 THE COURT: It isn't a matter of being revised. Ms.

13 Snowden, the first quarter is a different number --

14 THE WITNESS: Right.

15 THE COURT: -- in this report than is the one in the

16 second report.

17 THE WITNESS: Exactly.

18 THE COURT: Now, as I understood you, you testified

19 that after you received the second report, you called and told

20 them there was an error in the first report, the first report

21 number and the second report number for the first --

22 THE WITNESS: Yes.

23 THE COURT: -- period were incorrect.

24 THE WITNESS: Uh-huh.

25 THE COURT: Did you make that call?

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Snowden - cross

1 THE WITNESS: I made that call, and there is an  
2 original grant file here, I'm sure that the original grant file  
3 will reflect that.

4 Q. Well, when you got the next report, the third quarter, June  
5 30th, 2002, they carried forward the number from the mistaken  
6 second quarter report?

7 A. Uh-huh.

8 THE COURT: You're asking her to look at what?

9 Q. To look at exhibit 42, government exhibit 42.

10 A. They actual carried over to 17,792.26.

11 Q. Which was the mistaken number from the second report?

12 A. Yes. And if you look at the bottom of the form, this form  
13 wasn't even signed by him. It wasn't -- it wasn't authorized,  
14 it wasn't signed.

15 Q. But it was submitted, right?

16 A. It was -- of course, yes, it was submitted.

17 Q. And the numbers, according to you, were wrong because they  
18 used the numbers from the second quarter, not from the first  
19 quarter, the 12,000 number?

20 A. Yes.

21 Q. Right? Did you make another call after you got the third  
22 quarter financial statement?

23 A. Yes.

24 Q. And who did you speak to then?

25 A. Probably Lee Gurfein or Dr. Karron. I don't recall who I

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Snowden - cross

1 talked to.

2 Q. And you say you made a note, you wrote something down in a  
3 file about it?

4 A. Yes.

5 Q. How many calls did you make?

6 A. Quite a few.

7 Q. After you got the second financial statement, I'm sorry.  
8 After you got the third financial statement, and you had not  
9 received a revision of the second financial statement yet,  
10 correct?

11 A. Yes.

12 Q. How many calls did you make about that?

13 A. I made calls until it was corrected, and that is reflected  
14 in the original grant file.

15 Q. When was it corrected?

16 A. I have no idea, because the forms are not in front of me.

17 Q. Well, in fact, the first time you ever got a revised  
18 financial status report is reflected in the exhibits A to 40,  
19 41, 42, 43, correct?

20 A. No, that's not correct.

21 Q. Aren't those the revision reports?

22 A. These are, these are revised reports, but these are not the  
23 first revised reports.

24 Q. Where is the first revised report?

25 A. In the original grant file.

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Snowden - cross

1

Q. You never turned it over to the Prosecutor?

2

A. Yes.

3

Q. So you're telling us there are additional reports than what

4

we have here as exhibits, within exhibit 40 through 43?

5

A. I'm telling you that there are correspondence, additional

6

correspondence to these exhibits.

7

Q. Isn't it a fact, ma'am, that the first revised reports you

8

got for any quarter of the first year of the grant was on

9

August 13th, 2003?

10

A. No.

11 (Continued on next page)

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8647KAR5

Snowden - cross

1 BY MR. RUBINSTEIN:

2 Q. Would you take a look at Exhibit 40A, please. Do you see  
3 that exhibit that's in evidence, ma'am?

4 A. Yes.

5 Q. Do you see that is a revised financial status report?

6 A. Yes.

7 Q. And that is a report for the first period October 1, 2001  
8 to December 31, 2001?

9 A. Yes.

10 Q. Signed by Dr. Karron?

11 A. Yes.

12 Q. Dated?

13 A. Oh, it's dated August 13, 2003.

14 Q. And in the next quarter take a look at 41A that's in  
15 evidence, and that's for the second quarter ending March 31,  
16 2002, correct?

17 A. Yes.

18 Q. And what date? Is that dated as date report submitted?

19 A. August 13, 2002. 2003, sorry.

20 Q. Same date as the first one, right?

21 A. Yes.

22 Q. Now let's go to 42A. Is there a 42A?

23 A. Yes.

24 Q. And 42 is the one, the original one that was submitted. It  
25 was not signed by Dr. Karron. 42A is signed by Dr. Karron,

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8647KAR5                      Snowden - cross

1     correct?

2     A.   Yes.

3     Q.   And that covers the period of June 30, 2002 ending, right?

4     A.   Yes.

5     Q.   And that's signed by Dr. Karron?

6     A.   Yes.

7     Q.   And what date was that report submitted?

8     A.   August 13, 2003.

9     Q.   Same date, right?

10    A.   Yes.

11    Q.   And let's take a look at 43A, and that relates to the

12    fourth quarter September 30, 2002, signed by Dr. Karron,

13    correct?

14    A.   Yes.

15    Q.   And what date is that revised?

16    A.   August 13, 2003.

17    Q.   So, all four of these revised reports were submitted on the

18    very same day, correct?

19    A.   Yes.   They were signed on -- yes.

20    Q.   As a matter of fact, that was the very same day that Bob

21    Benedict wrote you a letter that's Exhibit 48, that he cc'd to

22    Marilyn Goldstein, correct?

23                THE COURT:    Do you have 48?

24    A.   Yes, it's the same date.

25    Q.   By the way, did you ever review -- withdrawn.

8647KAR5

Snowden - cross

1 Is a grantee supposed to have a business manual?

2 A. Under regulation the grantee should have the proper written  
3 management procedures within his company.

4 Q. Do you know whether or not CASI, Inc. had proper -- had any  
5 sort of manual or business procedures?

6 A. According to a document that was sent to us by his  
7 accounting firm that he hired, he did have a proper accounting  
8 system within his corporation.

9 Q. And what about did he have a manual for fringe benefits?

10 A. Nothing that I reviewed. All I know is that we received a  
11 document from an independent CPA saying that Dr. Karron's  
12 company, CASI, had the proper management procedures to process  
13 federal government funds.

14 Q. Did you ever ask Dr. Karron or any business administrator  
15 for CASI whether or not they had a manual that encompassed  
16 fringe benefits?

17 A. No.

18 Q. Now, did you have contact with Dr. Karron in July of 2003  
19 after the grant was suspended?

20 A. Possibly.

21 Q. Let me show you what has been marked for identification as  
22 Defendant's D and E.

23 THE COURT: Can I have the designation again? B and  
24 C?

25 MR. RUBINSTEIN: D and E.

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8647KAR5

Snowden - cross

1 MR. KWOK: May we approach, your Honor?  
2 THE COURT: Have you looked at both documents?  
3 MR. KWOK: Yes.  
4 THE COURT: All right.  
5 (Continued on next page)  
6  
7  
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11  
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8647KAR5

Snowden - cross

1 (At the sidebar)

2 MR. EVERDELL: Your Honor, this e-mail, she is not  
3 even on this e-mail, not on either one of these e-mails. Hope  
4 Snowden is not on either of these two e-mails at all, so I  
5 don't see how it's possible he could introduce it through her.

6 Secondly, this e-mail here and actually that e-mail  
7 there is outside the indictment period. This ends June 2003.  
8 These are e-mails July 24, 2003.

9 MR. RUBINSTEIN: Judge, we have the letter from  
10 Ms. Goldstein in the 3500 that I showed before that's dated  
11 July I think 24th or 25th. I'll get it.

12 This is a letter July 25 from Ms. Goldstein, that she  
13 has identified that she is aware of and she has seen. That's  
14 her boss. These e-mails relate to what was going on at that  
15 time.

16 THE COURT: But this doesn't look like the original  
17 document.

18 MR. RUBINSTEIN: No, it's a copy of the e-mail.

19 THE COURT: But it doesn't look like an original copy  
20 or a photostat or anything of that sort.

21 MR. RUBINSTEIN: No, we took it off what the  
22 government has provided -- what we have, sorry. This is off  
23 e-mails that we had on the computer that we had retrieved from  
24 the computers.

25 THE COURT: But it doesn't look like a retrieved

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Snowden - cross

1 e-mail. It's in different print, etc. I mean it just doesn't  
2 look like any --

3 MR. RUBINSTEIN: She can say whether or not this is --

4 THE COURT: If you have the original, why not use the  
5 original?

6 MR. RUBINSTEIN: I don't have the original. That's  
7 why I'm showing this one.

8 THE COURT: I thought I saw it in the 3500 material,  
9 something about cheers.

10 MR. RUBINSTEIN: It might be in there, but -- let me  
11 take a look at the 3500 material.

12 THE COURT: What's the matter with the other letter  
13 from Benedict?

14 MR. EVERDELL: Well, first of all, it's from Bob  
15 Benedict to Dr. Karron, and that's a hearsay problem.

16 Secondly, this is outside the scope. This is July 24,  
17 2003. The indictment only alleges up to June 2003. How is  
18 this relevant?

19 MR. RUBINSTEIN: It's relevant on the issue of intent,  
20 your Honor. It's also relevant in the -- I saw those e-mails  
21 myself, Judge, but I couldn't remember where it was, so I  
22 printed out new ones. I don't know what I did with the  
23 original e-mails, so I had them printed off the computer that  
24 it was saved.

25 MR. KWOK: If I may, I just don't see how it goes to

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Snowden - cross

1 the issue of intent for something that's happening after the  
2 end of the indictment that's being charged.

3 THE COURT: Which one?

4 MR. KWOK: All of these. It's like in July of 2003.  
5 This is also July 2003, and so is this one.

6 The indictment charges it ends in June 2003. You  
7 can't unring a bell. If he had the intent to steal, the fact  
8 that he later wanted to correct it after he knows that he is in  
9 trouble does not undo that intent.

10 MR. RUBINSTEIN: Well, he doesn't know; he just knows  
11 the grant is suspended.

12 THE COURT: I don't think you can get it in through  
13 this witness.

14 MR. RUBINSTEIN: Then I will just ask about this  
15 reference over here in the document that she has identified  
16 where they talk about --

17 MR. KWOK: But it's still not in evidence. You can't  
18 read it.

19 MR. RUBINSTEIN: No, I can ask her. She has  
20 identified this.

21 MR. KWOK: We will object if you ask her.

22 THE COURT: If you all talk at the same time, I can't  
23 concentrate on what you're saying.

24 Well, I don't know the witness has seen this.

25 MR. RUBINSTEIN: I did. I showed it to her, and she

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Snowden - cross

1 has identified this, and she recognized it.

2 THE COURT: Any objection to 3504-M?

3 MR. EVERDELL: Are you trying to introduce it into  
4 evidence?

5 THE COURT: Yes, he is.

6 MR. EVERDELL: That's not what I understood.

7 MR. KWOK: I think it's fine. No objection to that.

8 THE COURT: All right.

9 (Continued on next page)

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Snowden - cross

1 (In open court)

2 MR. RUBINSTEIN: Your Honor, I would at this time like  
3 to offer what has been previously marked as Government Exhibit  
4 3504-M --

5 THE COURT: For --

6 MR. RUBINSTEIN: -- for identification, as Defendant's  
7 Exhibit F in evidence.

8 THE COURT: All right.

9 MR. EVERDELL: No objection.

10 THE COURT: It's a letter from Ms. Goldstein?

11 MR. RUBINSTEIN: That is correct, your Honor.

12 THE COURT: Dated July what?

13 MR. RUBINSTEIN: Dated July 25, '03.

14 THE COURT: That's after the grant was suspended?

15 MR. RUBINSTEIN: Right.

16 (Defendant's Exhibit F received in evidence)

17 THE COURT: Do you want to display it to the jury?

18 MR. RUBINSTEIN: Yes. I will read the document to the

19 jury. It's from the United States Department of Commerce,  
20 National Institute of Standards and Technology, Gaithersburg,  
21 Maryland, July 25, 2003, Dr. D.B. Karron, Computer Aided  
22 Surgery, Inc., 300 East 33rd Street, Suite 4N, New York, New  
23 York 10016. Re cooperative agreement number 70NANB1H3050.

24 "Dear Dr. Karron. In response to your e-mail dated  
25 July 16, 2003, the money in your bank account does not

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1     constitute cost share. To qualify as cost share you would have  
2     to actually apply your contribution to the project cost. In  
3     order to resolve amendment 6, noncompliance of the special  
4     award commission 7, cost share, you need to refund to the  
5     government your applicable portion of the project cost and  
6     resubmit corrected 269 reflecting that contribution.

7                "In reference to your proposed in kind contribution,  
8     you cannot claim the full cost of preowned equipment.  
9     According to the cost principles, you can only claim fair use  
10    allowance (with rentals).

11               "If you need additional information, please contact  
12    Hope Snowden at 301-975-602 or via e-mail at  
13    Hope.snowden@NIST.gov. Sincerely, Marilyn Goldstein, grant  
14    officer."

15               Ms. Snowden, after July 25, 2003 did Dr. Karron  
16    contact you?

17    A. I don't recall.

18    Q. Did you contact Dr. Karron?

19    A. No.

20               MR. RUBINSTEIN: No further questions, your Honor.

21               THE COURT: All right. Thank you very much.

22    Redirect?

23               MR. EVERDELL: Yes, please, your Honor.

24               THE COURT: Let's make it short.

25

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Snowden - cross

1 REDIRECT EXAMINATION

2 BY MR. EVERDELL:

3 Q. Hello again, Ms. Snowden.

4 A. Hello.

5 Q. You were asked several questions on cross-examination, and

6 I want to discuss a few of them.

7 If we could put up Government Exhibit 4, page 7.

8 Do you recall being asked about that slide?

9 A. Yes.

10 Q. And you recall being asked about bankruptcy in that slide?

11 A. Yes.

12 Q. What's the word after "bankruptcy" on that slide?

13 A. "Protection".

14 Q. So bankruptcy protection. What exactly are you referring

15 to when you have "bankruptcy protection" on that slide?

16 A. Bankruptcy protection is a reorganization. A company  
17 reorganizes so that they don't want to totally -- the company  
18 is not totally going to go away, they are going to reorganize  
19 so they can pay their financial debt.

20 Q. And is that something you have to notify the grant  
21 specialist of?

22 A. Yes.

23 Q. So, it's not if you are broke, is it?

24 A. No, it's not if you are broke; it's when you reorganize  
25 financially.

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Snowden - redirect

1 Q. You were also asked some questions about revising budgets.

2 A. Yes.

3 Q. There are a few there I want to touch on. First, you said  
4 that I believe you can revise your budget at the end of the  
5 first year, is that right?

6 A. Yes.

7 Q. But if your year one has already ended, can you revise your  
8 year one numbers at that point?

9 A. No.

10 Q. So, what can you revise at the end of the first year of  
11 your budget?

12 A. If your year one has ended, you can revise your out years,  
13 which would be years two and three.

14 Q. And you were also asked I believe about revising budgets,  
15 specifically the ten percent rule which is on that slide. Is  
16 that right?

17 A. Yes.

18 Q. And you testified about what that 10 percent rule means,  
19 right?

20 A. Yes.

21 Q. And is that 10 percent of the total award amount or 10  
22 percent of the annual budget that you're allowing?

23 A. It's 10 percent of the annual budget.

24 Q. So, if you are allowed \$800,000 in the first year of your  
25 grant, how much can you move around in the first year of your

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- 1     grant without getting prior approval?
- 2     A.   \$79,999.99, under \$80,000.
- 3     Q.   And can those revisions be additions and subtractions?
- 4     A.   The 80,000 includes additions and subtractions.
- 5     Q.   And does the total have to be 80,000 under that example?
- 6     A.   Yes.
- 7     Q.   Now, when you revise your budget though can you create
- 8     brand new categories without approval?
- 9     A.   No.
- 10    Q.   You need prior approval for that?
- 11    A.   Yes.
- 12    Q.   OK.   Do you recall being asked about Bob Benedict?
- 13    A.   Yes.
- 14    Q.   Do you recall who Bob Benedict is?
- 15    A.   There was a letter from Dr. Karron saying that he was going
- 16    to be the new administrator under CASI.
- 17    Q.   And do you recall when that letter was sent?
- 18    A.   I think it was like September 2003.
- 19    Q.   Are you certain of that?
- 20    A.   No.
- 21    Q.   Do you need something to refresh your recollection?
- 22    A.   Please.
- 23                THE COURT:   Has Mr. Rubinstein seen the document that
- 24     you are showing the witness?
- 25                MR. EVERDELL:   Sorry.   Mr. Rubinstein, this is --

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Snowden - redirect

1 THE COURT: Show him what you are going to show the  
2 witness.

3 MR. EVERDELL: It's 3504-L.

4 MR. RUBINSTEIN: I have a copy of it.

5 THE COURT: OK.

6 A. Oh, it's February 25, 2003.

7 Q. So, say again the date of when Dr. Karron requested Bob  
8 Benedict be made the --

9 A. February 25, 2003.

10 Q. Now, I believe you testified on direct that you didn't  
11 approve Mr. Benedict, is that right?

12 A. No, I did not.

13 Q. And what was the reason why he was not approved?

14 A. He was not approved because the budget had fluctuated so  
15 many times none of the budgets were approved.

16 He was incorporated into the budget as a proposed  
17 revision, and since they weren't approved, he was never  
18 approved, so he was never authorized to make any decisions  
19 under the ATP grant.

20 Q. And do you recall when the last proposed budget revision  
21 was submitted?

22 A. In 2003. The last one I think was like February 2003.

23 Q. If you refer to Government Exhibit 36. Do you have that in  
24 front of you?

25 A. Yes.

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Snowden - redirect

1 Q. Is that the last proposed budget revision?

2 A. To my recollection, this is the last proposed budget.

3 Q. And what's the date on the last proposed budget revision?

4 A. February 25, 2003.

5 Q. Is that the same date as the letter requesting Mr. Benedict

6 be appointed as the administrator at CASI?

7 A. Yes.

8 Q. And was this amendment ever approved?

9 A. No, it never was.

10 Q. Are you still able to have discussions with an unapproved

11 contact person like that?

12 A. If they're unapproved I can have discussions with him, but

13 nothing he says can be validated because you're not an approved

14 personnel. So, I can talk to them verbally, but until you are

15 incorporated into the budget, in the approved budget, it's not

16 authentic, so you can't make any decisions under the ATP

17 project.

18 Q. Now, in terms of hiring decisions in general, which I

19 believe you were asked about, does the grants office, your

20 office, review hiring decisions of the companies that receive

21 ATP grants?

22 A. No, the companies, they're commercial companies, they can

23 hire and fire whoever they want, but anybody that participates

24 on the ATP grant, we have to -- the grant officer has to

25 approve. But otherwise just normal business day, they can hire

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1 and fire whoever they want; we have nothing to do with that.

2 Q. So, you don't review résumés necessarily of people that are  
3 hired by companies?

4 A. No.

5 Q. All right. You were asked a series of questions about the  
6 budget amendments and the \$80,000 10 percent cap in this case.  
7 Do you remember that?

8 A. Yes.

9 Q. I just want to go through that very quickly if possible,  
10 but I think we should go through that.

11 If we could have Government's 14 on the screen.

12 Do you see that document?

13 A. Yes.

14 Q. I believe you testified before that this was the last  
15 approved budget, is that right?

16 A. No, 14, this is the original budget.

17 Q. Sorry, you're right, that's the original budget.

18 A. This is the original budget.

19 Q. OK. And then if you look at amendment 2, which is  
20 Government Exhibit 22, the third page of that exhibit. We  
21 discussed this on direct, is that right?

22 A. Yes.

23 Q. And that is I believe the only amendment that was approved  
24 to the actual budget numbers, is that right?

25 A. This is the only approved revised budget.

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Snowden - redirect

1 Q. What was the date on that budget?

2 A. This budget was dated 12/27/01.

3 Q. Now, you testified on cross-examination and on direct about  
4 conversations you had with Dr. Karron about equipment costs,  
5 right, an additional piece of equipment?

6 A. About adding additional equipment to the program, yes.

7 Q. And I believe that you testified that you needed him to  
8 submit a budget amendment request because it was over \$80,000,  
9 is that right?

10 A. Yes.

11 Q. OK. I just want to compare -- this is the final approved  
12 budget, is that right, the last approved budget amendment?

13 A. Yes.

14 Q. Then let's compare that to Government Exhibit 32.

15 THE COURT: Well, we are looking at Government Exhibit  
16 22.

17 MR. EVERDELL: Government Exhibit 22 is on the screen.  
18 I don't know if it's possible to do a side-by-side comparison.  
19 Yes? On the left-hand side Government Exhibit 22.

20 THE COURT: No one can see these. No one can see  
21 them. I'm closer than they are, and I can't see them.

22 MR. EVERDELL: Then we will just discuss it.

23 THE COURT: You have to go to the exhibit numbers.

24 MR. EVERDELL: Absolutely, your Honor.

25 Q. We just looked at Government Exhibit 22, which was

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1       amendment to the final revised budget that was approved, right?

2       A.    Yes.

3       Q.    Do you see the equipment costs there?

4       A.    Yes.

5       Q.    For year one.

6       A.    Yes.

7       Q.    What is the number there?

8       A.    \$110,000.

9       Q.    OK.    And then you're now looking at Government's 32, which  
10      I believe you were looking at on cross-examination.

11      A.    Yes.

12      Q.    Is this a proposed budget or was this approved?

13      A.    Proposed.

14      Q.    So this is proposed.    Will you look at the equipment line  
15      there.

16      A.    Yes.

17      Q.    For year one?

18      A.    Yes.

19      Q.    What's the number there?

20      A.    \$303,400.

21      Q.    And is that more than \$80,000 more than the last approved  
22      budget for that equipment line in year one?

23      A.    Yes.

24                      THE COURT:    I'm sorry.    I've got the wrong exhibit.

25      Just a second.    All right.    Go ahead.

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Snowden - redirect

1 Q. So, then looking at 32, which is a proposed budget, I think  
2 you testified, right --

3 A. Yes.

4 Q. -- the equipment line there says -- and now it's on the  
5 screen -- \$303,400, right?

6 A. Yes.

7 Q. Whereas before you said the last approved budget the  
8 equipment line for year one was \$110,000, isn't that right?

9 A. Yes.

10 Q. So, that is an increase of just below \$200,000, isn't it?

11 A. Yes.

12 Q. All right. So, is that more than \$80,000?

13 A. Yes, it is.

14 Q. The 10 percent limit?

15 A. Yes.

16 Q. And is that why you had discussions with Dr. Karron about  
17 submitting a revised budget amendment?

18 A. Yes.

19 Q. And let's go to Government Exhibit 35, page 7.

20 Do you have that in front of you?

21 A. Yes, I do.

22 Q. Do you recall being asked questions on cross-examination  
23 about this equipment category?

24 A. Yes.

25 Q. OK. Now, would equipment costs -- well, let me read the

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1 last sentence, the last two sentences here. It says, "ATP  
2 funds may not be used for construction of new buildings or  
3 extensive renovations of existing laboratory buildings. ATP  
4 funds may, however, be used for construction of experimental  
5 research and development facilities to be located within a new  
6 or existing building provided that the equipment or facilities  
7 are essential for carrying out that project. If such costs are  
8 proposed, include below and provide justification."

9 That's what it says, right?

10 A. Yes.

11 Q. Now that last sentence, 'if such costs are proposed,  
12 include below and provide justification," why is that sentence  
13 there?

14 A. "If such costs are proposed, include below and provide  
15 justification," because it may -- it could be considered. But  
16 that's a consideration. But there was none incorporated into  
17 this proposal. There was no costs.

18 Q. Do construction costs, things like that, have to be  
19 approved in the budget before you can spend money on them?

20 A. Yes.

21 Q. OK.

22 THE COURT: Well, what is the item that appears at the  
23 end of that exhibit -- or not the end -- a few pages later,  
24 total down below is \$231,719 at the bottom of the page? Now,  
25 as I see it, there is a document at the end that says item

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1 methodology, computation and costs, three pages later is it,  
2 counsel? And there it says video system, work station,  
3 servers, printer, fire wall, lab camera, scanners, tape drive,  
4 library, switches, air conditioning and software.

5 Have you got that?

6 THE WITNESS: Yes.

7 THE COURT: Well, that totals up to \$231,719 at the  
8 bottom?

9 THE WITNESS: Um-hum.

10 THE COURT: What's the problem?

11 Q. The question is: Were these costs ever approved?

12 A. No, they were never approved.

13 Q. And if you take a look at Government Exhibit 1, page 6.  
14 First, looking at Government Exhibit 1 when you get it, just  
15 tell us what that is.

16 THE COURT: You say they were never approved, but that  
17 isn't quite what I was asking you. This is for equipment, but  
18 this is not for -- none of those funds were, as I read it, are  
19 for construction of new buildings or extensive renovations,  
20 other than possibly the air conditioning and switches. Am I  
21 wrong, counsel?

22 MR. EVERDELL: Your Honor, the category was listed as  
23 equipment in subcategory D, and you are right that that number  
24 is fully elaborated, itemized later on in the exhibit, and it  
25 does add up, so these are the costs that are being claimed

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1     under equipment.

2                      THE COURT:   It doesn't include installation.

3                      MR. EVERDELL:   That's correct.   It includes -- this  
4     talks about using these funds for construction of new buildings  
5     and extensive renovation of existing laboratories, and that's  
6     where these costs -- according to that language we read out,  
7     these costs are contemplated for that purpose.

8                      THE COURT:   Well, what about construction on  
9     experimental research and development facilities to be located  
10    in existing buildings, not new, provided that the equipment and  
11    facilities are essential for carrying out the project?

12                     MR. EVERDELL:   Correct.   I think my question was were  
13    these funds in fact ever approved.

14                     THE WITNESS:   No, they weren't.   They were requested  
15    and proposed but never approved.

16    Q.   And if you could look at --

17                     THE COURT:   The issue is whether or not they properly  
18    come within that framework of Exhibit D; it's just that they  
19    were not approved.   Is that right?

20                     MR. EVERDELL:   Correct, your Honor.

21                     THE COURT:   That's what I want to find out.

22                     MR. EVERDELL:   Sorry.

23                     THE COURT:   Sure.

24    Q.   And what is Exhibit 1 again?

25    A.   Exhibit 1 is the Advanced Technology Program proposal

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Snowden - redirect

1 preparation kit.

2 Q. Was that given to the defendant as part of his proposal  
3 when he submitted it for an ATP grant?

4 A. Yes. I don't know -- he probably went to a proposer's  
5 conference, and anybody that wants to propose a grant, this is  
6 a package that gives you an outline, gives you direction and  
7 guidance on how to complete a proposal to submit to ATP. So,  
8 he picked it up, he got it from somewhere.

9 Q. OK. And then if we could highlight 5A, and I will just  
10 read it. "What types of costs are unallowable." Right?

11 And then 5A says "Regardless of whether they are allow  
12 under the federal cost principles, the following are  
13 unallowable under ATP: Construction of new buildings or  
14 extensive renovation of existing laboratory buildings.  
15 However, construction of experimental research and development  
16 facilities to be located within a new or existing building are  
17 allowable provided that the equipment or facilities are  
18 essential for carrying out the proposed scientific and  
19 technical project and are approved by the NIST grants officer."

20 Is that what that says?

21 A. Yes.

22 Q. Are you the NIST grants officer for the ATP grant for CASI?

23 A. No.

24 Q. Is that your supervisor?

25 A. That's my supervisor. I'm the grant specialist.

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Snowden - redirect

1 Q. And you work in the grants office.

2 A. Yes.

3 THE COURT: Who is your supervisor?

4 THE WITNESS: Formerly, when this was going on her  
5 name is Marilyn Goldstein. Right now her name is Melinda  
6 Tukram.

7 Q. Is Marilyn Goldstein the actual grants officer, the one who  
8 would sign off on the actual amendments that were approved?

9 A. Yes.

10 Q. OK. You were also asked on cross-examination about sunk  
11 costs, costs incurred before the grant was actually awarded.

12 A. Yes.

13 Q. What is the rule on that again?

14 A. We don't pay for preaward costs.

15 Q. If you can go to Government Exhibit 13 and highlight  
16 funding limitations number 6.

17 Do you know what this document is, Ms. Snowden?

18 A. Yes.

19 Q. What's this?

20 A. These are the special award conditions that are attached to  
21 the grant.

22 Q. And was this attached to the CASI's ATP grant?

23 A. Yes, it was.

24 Q. I will just read the funding limitations. "The scope of  
25 work and budget incorporated into this award cover the three

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1     year period (referred to as the project period) for a total  
2     amount of \$2 million in federal funds. However, federal  
3     funding available at this time is limited to \$800,000 for the  
4     first year period from October 1, 2001 through September 30,  
5     2002, referred to as the budget period."

6                      Do you see that?

7     A. Yes.

8     Q. So, what does that mean that the \$800,000 are available for  
9     that period October 1, 2003 through September 2 -- 30, 2002?

10    A. That's the period that these funds can be expended so they  
11    can be spent within starting October 1, 2001 through September  
12    30, 2002.

13    Q. So, if you wanted to expend these ATP funds for a cost that  
14    occurred before that period, could you do it?

15    A. No.

16    Q. And was this special conditions award document given to the  
17    defendant as part of his grant proposal when he received the  
18    grant?

19    A. Yes.

20                      THE COURT: Any further questions?

21                      MR. EVERDELL: Sorry?

22                      THE COURT: Do you have anything further with this  
23    witness?

24                      MR. EVERDELL: Your Honor, I do have to cover just a  
25    few more topics.

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Snowden - redirect

1 THE COURT: Let's move along.

2 Q. All right. Ms. Snowden you were asked a question about the  
3 audits on cross-examination. I believe you said that you told  
4 the defendant that you paid for the audit and you wanted it.

5 A. Yes.

6 Q. What prompted you to say that?

7 A. The audit was very delinquent and past due. We needed --  
8 the audit was due, it was delinquent, and therefore I requested  
9 a copy of the audit.

10 Q. OK.

11 MR. EVERDELL: Almost done, your Honor.

12 Q. You were also questioned about the financial status reports  
13 and the revisions to the financial status reports.

14 A. Yes.

15 Q. And I believe you testified on cross-examination that there  
16 were other revisions that you had put in the grant file.

17 A. Yes.

18 Q. And in fact the first revisions were not on August 13,  
19 2003, there were other revisions that you recalled?

20 A. Quite a few in the middle of that date.

21 MR. EVERDELL: Your Honor, I haven't marked these yet,  
22 but I would like to mark them for identification. I would like  
23 to mark these for identification as Government Exhibit 2000 and  
24 2001.

25 Q. Do you see those documents?

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1 A. Yes.

2 Q. Do you recognize those documents?

3 A. Yes.

4 Q. How do you recognize them?

5 A. They were sent to me by Dr. Karron.

6 Q. And what are those documents?

7 A. These are financial status reports.

8 MR. EVERDELL: The government moves 2000 and 2001 be  
9 admitted into evidence.

10 THE COURT: May I see them? No objection, Exhibit  
11 2000 and 2001 are admitted into evidence.

12 MR. EVERDELL: Your Honor, may I publish?

13 THE COURT: Yes, you may.

14 (Government's Exhibits 2000 and 2001 received in  
15 evidence)

16 THE COURT: Blow it up so they can read it.

17 Q. All right. Ms. Snowden, you testified that this is a  
18 revised financial report you received from Dr. Karron?

19 A. Yes.

20 Q. And what period does that revised financial report supposed  
21 to cover?

22 A. October 1, 2001 through March 31, 2002.

23 Q. Do you see the date on the bottom of that revision?

24 A. Yes.

25 Q. What is the date on the very bottom of that revision?

8647KAR5

Snowden - redirect

1 A. April 21, 2002.

2 Q. Who signed that?

3 A. Dr. Karron.

4 Q. And do you see the scratch-outs on total outlays up top?

5 A. Yes.

6 Q. What are those?

7 A. Those are mathematical errors that I noticed.

8 THE COURT: Are they.

9 THE WITNESS: Yes, that's my handwriting.

10 Q. And what are those revisions based on?

11 A. The previous report that was sent. Now because it says  
12 previously reported, the numbers are wrong, so I have -- I did  
13 the math, scratched them out and then called Dr. Karron for him  
14 to revise them again.

15 Q. And was this revised support submitted by Dr. Karron?

16 A. Yes.

17 Q. I show you Government Exhibit 2001.

18 MR. RUBINSTEIN: Can I have 2000, please?

19 Q. Do you see that document?

20 A. Yes.

21 Q. What period is this supposed to cover?

22 A. April 1, 2002 --

23 MR. RUBINSTEIN: Judge, I'm going to object and ask  
24 for a sidebar. These documents have never been given to me  
25 before.

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Snowden - redirect

1 THE COURT: Well, you should have raised that before  
2 we admitted them in evidence, Mr. Rubinstein.

3 MR. RUBINSTEIN: I'm sorry, Judge. They should have  
4 given me a copy, Judge. I am sorry. I was trying to get  
5 something else. It's my fault.

6 THE COURT: I'm sorry, but this is not a proper way to  
7 raise it. I will go over and hear you at the sidebar, but it's  
8 a little late.

9 MR. RUBINSTEIN: You're right.

10 (Continued on next page)

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Snowden - redirect

1 (At the sidebar)

2 MR. RUBINSTEIN: I apologize, Judge, but I didn't  
3 think that the government was going to offer something that  
4 they never turned over, that's clearly 3500 material.

5 MR. KWOK: Well --

6 MR. RUBINSTEIN: And to introduce it is inappropriate.  
7 OK? And they violated Rule 3500, and your Honor should strike  
8 these documents from the record.

9 THE COURT: I will take it under advisement and hear  
10 you after the end of the court day.

11 (Continued on next page)

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8647KAR5

Snowden - redirect

1 (In open court)

2 BY MR. EVERDELL:

3 Q. Just looking again at Government Exhibit 2001.

4 A. Yes.

5 Q. What period is that supposed to cover?

6 A. That's April 1, 2002 through June 30, 2002.

7 Q. Is that a revised financial report?

8 A. Yes, it is.

9 Q. And what's the date on that revised financial report?

10 A. July 2002.

11 Q. Do you know who submitted this to you? I know the  
12 signature is obscured.

13 A. Dr. Karron. He was the only authorized official signer of  
14 these documents.

15 Q. What is that note "review all 269, 7/19/02"?

16 A. Because there were so many revisions in between the  
17 original and the final that was given to me -- the original --  
18 there was a lot of revisions in between, so I would call him  
19 all the time, these numbers are wrong, you need to review,  
20 revise, correct and resend.

21 So, I was making notes to myself, and the note was  
22 check them all, because there are too many fluctuating numbers  
23 in here; you can't keep making so many mathematical mistakes;  
24 there is too many mistakes in here.

25 Q. Did you in fact have conversations with Dr. Karron about

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Snowden - redirect

1 that?

2      A.    Yes.

3 THE COURT: And that note is 7/19/02.

4 THE WITNESS: Yes.

5 MR. EVERDELL: Your Honor, no further questions for  
6 this witness.

7 MR. RUBINSTEIN: Just one, your Honor.

8        RECROSS EXAMINATION

9 BY MR. RUBINSTEIN:

10 Q. Could we have Exhibit 10B, the page that starts with D,  
11 equipment.

12 DEPUTY COURT CLERK: What pages?

13 MR. RUBINSTEIN: I will put it on the Elmo.

14 DEPUTY COURT CLERK: Is there a number on it?

15 MR. RUBINSTEIN: It's 10B.

16 THE COURT: It's about four pages into 10B.

17 MR. RUBINSTEIN: Thank you, Judge. Maybe we can put  
18 it on the Elmo.

19 THE COURT: It's been up there a few times.

20 MR. RUBINSTEIN: Is this page in the binders? OK.

21 Q. Now, the government showed you on redirect a portion from  
22 an exhibit that provided that prior approval was required for  
23 construction related to the research and development, correct?  
24 Do you remember just being shown something on the screen  
25 before?

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Snowden - recross

1 A. Yes.

2 Q. Now, in 10B, Exhibit 10B, it's a fact that it states "If  
3 such costs are proposed, include below and provide  
4 justification." Correct?

5 A. Yes.

6 Q. There is nothing in 10B that suggests that you need prior  
7 approval, correct?

8 A. Correct.

9 MR. RUBINSTEIN: No further questions, Judge.

10 THE COURT: Do you want to reopen?

11 MR. EVERDELL: No.

12 THE COURT: All done? You are excused.

13 (Witness excused)

14 THE COURT: Next witness.

15 MR. KWOK: Before I call the next witness, the  
16 government wants to read a proposed stipulation into the record  
17 at this time.

18 THE COURT: All right. Read it.

19 Get the witness ready. Time is wasting.

20 I should have said something to the jury.

21 During that last examination I asked quite a few  
22 questions, and it's not my purpose to interfere with the  
23 examination going on. I asked the questions for clarification  
24 purposes when I think that the testimony isn't clear or and  
25 times in an attempt to speed things up. You are not to draw

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Snowden - recross

1 any conclusions from the fact that I asked questions of one  
2 witness or another. I just have very much in mind the time  
3 problems in the case, and I want to get the case over as soon  
4 as possible. I think I'm helping, but I may not be helping,  
5 and I try to anticipate questions I think the jury might have  
6 so that things are clear for the jury. That's the purpose of  
7 the questioning, but it's not that I'm taking sides with one  
8 side or the other.

9 MR. RUBINSTEIN: Your Honor, while the government  
10 reads the stipulation, which I have agreed to, can I run out  
11 for a second so we don't stop anything?

12 THE COURT: Yes, you may. Thank you.

13 MR. KWOK: May I proceed, your Honor?

14 THE COURT: Yes.

15 MR. KWOK: I am reading into the record what's been  
16 marked for identification Government Exhibit 900, and it reads  
17 as follows:

18 United States of America v. Daniel B. Karron, the  
19 defendant, S2 07 Crim. 541. "It is hereby stipulated and  
20 agreed by and among the United States of America, by Michael J.  
21 Garcia, United States attorney for the Southern District of New  
22 York, Steven Kwok and Christian Everdell, assistant United  
23 States attorneys, of counsel, and defendant Daniel B. Karron by  
24 and with the consent of his attorney Ronald Rubinstein, Esq.  
25 that:

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1           "1. The documents marked for identification as  
2 Government Exhibit 80 are the records of the bank accounts of  
3 Daniel B. Karron, defendant, at JP Morgan Chase Bank from in or  
4 about October 2001 to in or about August of 2003.

5           "2. The documents marked for identification as  
6 Government Exhibit 81 are the records of the bank accounts of  
7 Computer Aided Surgery, Inc. (CASI) at JP Morgan Chase Bank  
8 from in or about October 2001 to in or about August 2003.

9           "3. The documents marked for identification as  
10 Government Exhibit 90 are the credit card statements for the  
11 American Express card bearing account number 3783-490172-15000  
12 from in or about October 2001 to in or about April 2003.

13           "4. The documents marked for identification as  
14 Government Exhibit 100 are the records of purchases at Data  
15 Vision by CASI from in or about October 2001 to in or about  
16 October 2003.

17           "5. The documents marked for identification as  
18 Government Exhibit 101 are the records of purchases at Home  
19 Front Hardware Store by CASI from in or about September 2002 to  
20 in or about September 2003.

21           "6. The documents marked for identification as  
22 Government Exhibit 102 are the records of purchases at General  
23 Computer and Service by CASI from in or about October 2001 to  
24 in or about May 2003.

25           "7. Documents marked for identification as Government  
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1 Exhibit 103 are the records of purchases at Silicon Graphics,  
2 Inc. by CASI from in or about December 2001 to in or about  
3 January 2003.

4 "8. The documents marked for identification as  
5 Government Exhibit 104 are the records of purchases at Silicon  
6 City, Inc. by CASI in or about November 2001 to in or about May  
7 2003.

8 "9. The documents marked for identification as  
9 Government Exhibit 120A are the records of purchases at Silicon  
10 City, Inc. by CASI on or about May 10, 2002, March 27, 2002 and  
11 October 1, 2002, with proof of purchase and payment, and the  
12 records of purchase at Data Vision by CASI on or about  
13 September 20, 2002.

14 "The records marked for identification as Government's  
15 Exhibits 80, 81, 90, 100, 101, 102, 103, 104 and 120A are full  
16 and complete records of the acts, transactions and events  
17 described therein; were made and/or received and thereafter  
18 maintained in the regular course of business; were made at or  
19 near the time of the acts, transactions and events recorded  
20 therein; and contain the information set forth by or obtained  
21 from persons with knowledge of those matters.

22 "It is further stipulated and agreed that the  
23 Government's Exhibits 80, 81, 90, 100, 101, 102, 103, 104 and  
24 120A, and this stipulation, which is marked for identification  
25 as Government Exhibit 900, may be received in evidence as

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1 Government Exhibit in this trial, and it is signed June 3,  
2 2008, New York, New York, on behalf of the United States by  
3 Steve Kwok, and on behalf of Daniel B. Karron by Ronald  
4 Rubinstein, Esquire."

5 Your Honor, the government moves for the admission of  
6 this stipulation and the exhibits mentioned therein.

7 MR. RUBINSTEIN: No objection.

8 THE COURT: No objection? Let me have a copy of the  
9 stipulation, please.

10 Government's Exhibits 80, 81, 90 and 100, and Exhibits  
11 101, 102, 103, 104 and 104A are admitted in evidence pursuant  
12 to stipulation to the parties.

13 DEPUTY COURT CLERK: 104A or 120A?

14 THE COURT: I'm sorry. 104 and 120A. They are  
15 admitted into evidence. Thank you.

16 (Government's Exhibits 80, 81, 90, 100, 101, 102, 103,  
17 104, 120A received in evidence)

18 (Government's Exhibit 900 received in evidence)

19 MR. KWOK: The government calls Belinda Riley.

20 BELINDA RILEY,

21 called as a witness by the government,

22 having been duly sworn, testified as follows:

23

24 DEPUTY COURT CLERK: Please state you name, and spell  
25 you first and last name slowly for the record, please.

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THE WITNESS: My name is Hazel Riley, H-A-Z-E-L  
R-I-L-E-Y, but I go by Belinda.  
DIRECT EXAMINATION  
BY MR. KWOK:  
Q. Good afternoon, Ms. Riley.  
A. Good afternoon.  
Q. Where do you work?  
A. Department of Commerce, Office of Inspector General, the  
Atlanta region.  
Q. What's your job title?  
A. Assistant regional inspector general for audits, Atlanta  
region.  
Q. Is that a supervisory position?  
A. Yes, it is.  
Q. How long have you been a supervisor?  
A. For about two years.  
Q. What do you do in your current job?  
A. I supervise several employees, and I plan audits and other  
duties assigned.  
Q. What did you do before you became a supervisor?  
A. I was an auditor reviewing government grants or government  
programs.  
Q. You were an auditor with which department?  
A. The Department of Commerce, Office of Inspector General,

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Riley - direct

1 since June of '97.

2 Q. What were your duties and responsibilities when you were an  
3 auditor with the Department of Commerce?

4 A. To audit commerce programs, work up commerce grants, under  
5 the various agencies.

6 Q. What did you do before then, before you joined the commerce  
7 department?

8 A. I was a revenue agent with IRS for about 11 years.

9 Q. Can you give us a time frame if you remember?

10 A. I started in September of '86 and left in June of '97.

11 (Continued on next page)

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Riley - direct

1 Q. And what did you do as an agent with the IRS?

2 A. For the first -- I audited individual tax returns,  
3 corporate tax returns, excise tax returns.

4 Q. Ms. Riley, what's your educational background?

5 A. I have a bachelors of -- I have a B.A. in accounting, a  
6 B.A. in accounting information systems, a Bachelor of Science  
7 in Computer Science Programming Option, and I am a certified  
8 CPA.

9 Q. How did you become a certified CPA, what --

10 A. Certified Public Accountant.

11 Q. What does CPA stand for?

12 A. Certified Public Accountant.

13 Q. How did you become certified?

14 A. I took a CPA exam at the time, I think it was a  
15 two-and-a-half day test that's like 19 hours, and you also had  
16 to have five years for government to become a CPA in  
17 accounting.

18 Q. Miss Riley, what, if any, professional recognition have you  
19 received for your accounting and auditing work?

20 A. I have two bronze medals and a silver medal awarded from  
21 the Department of Commerce.

22 MR. KWOK: Your Honor, government offers Belinda Riley  
23 as an expert in accounting and auditing procedures.

24 MR. RUBINSTEIN: No objection, your Honor.

25 THE COURT: All right. Ms. Riley is accepted as an

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864ZKAR6

Riley - direct

1 expert in accounting auditing procedures -- accounting and  
2 auditing procedures.

3 BY MR. KWOK:

4 Q. Ms. Riley, what kinds of grants does your office audit?

5 A. We audit NIST ATP grants, which is National Institute of  
6 Standards and Technology Advanced Technology Program, audits  
7 for research. We audit NTIA grants in telecommunications. We  
8 audit EDA grants, which is Economic Development Administration,  
9 whatever -- we can audit any grant that one of our commerce  
10 agencies give.

11 Q. Do all grants awarded by the Commerce Department get  
12 audited by the Office of the Inspector General?

13 A. No.

14 Q. How does your office become involved?

15 A. Our office becomes involved by request from NIST or it  
16 could be from the hot line call that says that they suspect an  
17 organization is using fraudulent, doing fraudulent activity.  
18 Or we have a -- we review all of the NIST ATP research grant  
19 awards submitted by the CPA firms, and so if during one of our  
20 reviews someone sees suspicious, we may audit that award.

21 Q. How many audits have you handled since you joined the  
22 department?

23 A. Probably about 10 or 15.

24 Q. How many times have you testified in a criminal trial  
25 before in connection with your auditing work?

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Riley - direct

1 A. None.

2 Q. Ms. Riley, did there come a time when you became involved  
3 in auditing an Advanced Technology Program grant or ATP grant  
4 awarded to a company known as CASI?

5 A. Yes.

6 Q. Who was the principal investigator of that grant?

7 A. Dan Karron.

8 Q. Do you see Dan Karron in the courtroom here today?

9 A. Yes, he's over there.

10 Q. Could you describe an article of clothing he's wearing?

11 A. He's got glasses -- he's got on glasses, a pony tail and is  
12 that a white and green tie?

13 MR. KWOK: Your Honor, may the record reflect that the  
14 witness has identified the defendant?

15 THE COURT: All right, the record will so reflect.

16 Q. Ms. Riley, how did you become involved in the CASI audit?

17 A. The NIST grants officers sent a letter to our -- the Office  
18 of Inspector General requesting an audit, and I was assigned  
19 the audit.

20 Q. What did they ask you to do?

21 A. To determine the financial status of the grant project.

22 Q. And when was this, approximately?

23 A. We received requests in May of 2003, approximately.

24 Q. What did you do upon receiving this request?

25 A. I called CASI to schedule an initial appointment for the

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864ZKAR6

Riley - direct

1 audit.

2 Q. Where did you go to conduct this audit?

3 A. To the CASI office apartment.

4 Q. And where is that?

5 A. In Manhattan.

6 Q. You said apartment. How do you know it was an apartment?

7 A. Well, on some of the visits, Mr. Karron would be getting  
8 out of bed to answer the door because I would get there early  
9 in the morning, 10:00 o'clock, 9, 10:00 o'clock, and he was a  
10 late night person.

11 Q. And what was the objective of your visit?

12 A. To determine the financial status of the grant cost.

13 Q. How do you get up to speed on the company's financial  
14 situation?

15 A. Okay. Prior -- by reviewing the ledgers and invoices  
16 provided by CASI to me. Prior to going to the -- prior to  
17 coming to Manhattan, I interviewed the NIST grants office  
18 people and reviewed their grant files concerning CASI.

19 Q. As part of that preparation, did you talk to anyone at  
20 CASI?

21 A. Yes. At CASI I talked to Dan Karron, to Joan Hayes, the  
22 CPA that he provided to, Frank Spring, a book keeper, to Bob  
23 Benedict, the project manager.

24 Q. And is that consistent with what you usually do?

25 A. Yes.

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Riley - direct

1 Q. Your usual practice?

2 A. Yes.

3 Q. You mentioned invoices. Can you tell us how those invoices  
4 related to what you do as an auditor?

5 A. Well, we trace -- we're provided journal entries or  
6 whatever, we're provided a list of expense, expenditures for  
7 award, we trace a sample of them, just the supporting voice or  
8 cancelled check.

9 Q. And were you able to find those invoices at CASI?

10 A. They provided some invoices. The invoices at CASI had  
11 been -- the original invoices had been scanned into the  
12 computer, and the original documents had been destroyed. And  
13 so for some of the invoices, there were multiple copies and  
14 some of them we had a hard time finding or didn't find.

15 Q. Did there come a time while you were conducting the audit  
16 that you spoke as to an individual by the name of Joan Hayes?

17 A. Yes.

18 Q. And what is your understanding as to what Joan Hayes was  
19 doing at CASI?

20 A. She had done the first year audit, they're required to have  
21 an audit by ATP, and she was -- I guess she was there to help  
22 me with my audit or to provide information about the CASI books  
23 and records or for answering questions I might have concerning  
24 the books and records.

25 Q. And what did you do with the materials that Joan Hayes

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Riley - direct

1 provided you?

2 A. I used, I used them as a source of my audit.

3 Q. And how long were you at CASI for this audit?

4 A. I think I got there on Wednesday and I left Thursday or  
5 Friday of the next week.

6 Q. Did you prepare a report after the audit?

7 A. Yes. I prepared a memo report, a short report.

8 Q. If you could find what's been marked for identification as  
9 government exhibit 60 in that pile that is in front of you?

10 A. Oh, okay. 60.

11 THE COURT: What period of time did you audit?

12 THE WITNESS: I audited the time 10/1 -- October,  
13 October 1st, 2001 through 6/30 -- 6/27, 2003.

14 Q. Do you have that document in front of you?

15 A. Yes.

16 Q. Government exhibit 60 marked for identification? Do you  
17 recognize that document?

18 A. Yes.

19 Q. Who prepared that document?

20 A. I did.

21 Q. And what is it?

22 A. It is our memo report that was prepared after the June 2003  
23 visits.

24 Q. Is that the visit you just referred to --

25 A. Yes.

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Riley - direct

1 Q. -- a moment ago?

2 A. Yes.

3 MR. KWOK: Your Honor, the government offers exhibit  
4 60?

5 MR. RUBINSTEIN: I'd like a brief voir dire, your  
6 Honor.

7 THE COURT: Yes, you may.

8 VOIR DIRE:

9 BY MR. RUBINSTEIN:

10 Q. Good afternoon, Ms. Riley.

11 A. Good afternoon.

12 Q. Now, you prepared this report from what documents?

13 A. This reports were prepared, my audit, as a result of the  
14 documents that Dr. Karron provided during that June visit.

15 Q. Dr. Karron or Ms. Hayes?

16 A. Dr. Karron, Joan Hayes, Bob Benedict, they were all there.  
17 Miss Hayes was supposed to be the representative leading me  
18 through the books and records, and she was representing Dr.  
19 Karron.

20 Q. Do you have copies of those documents?

21 A. The documents --

22 Q. That you used to --

23 A. Yes.

24 Q. -- create this report?

25 A. Yes.

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Riley - direct

1 Q. Where are they?

2 A. What -- my audit reports, my audit --

3 Q. Your what?

4 A. In my audit files. I think the document that my report,  
5 that the report was created from was provided. I mean, what --  
6 my own -- I have my audit report that I used to prepare this.

7 Q. In other words, do you make a report or create some  
8 writings to show that you used to put into this report,  
9 Government's 60?

10 A. Yes.

11 MR. RUBINSTEIN: May I approach the government, your  
12 Honor.

13 THE COURT: Yes, you may.

14 (Pause)

15 Q. Is it correct, ma'am, that you used Joan Hayes' work papers  
16 to do your -- this report?

17 A. I used the work -- the general ledgers, the cash  
18 disbursement registers, the -- whatever information, the books  
19 that were prepared by -- some things that Joan Hayes provided.  
20 The books that were being repprepared by Frank Spring. He  
21 also -- I also talked to him while I was there, to do -- to  
22 come up with the work papers from this report.

23 Q. Did you create any work papers, ma'am?

24 A. Yes, I did.

25 Q. Did you create a general ledger?

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Riley - direct

1 A. For this report?

2 Q. Yes.

3 A. No. I mean no.

4 Q. You used Joan Hayes' --

5 A. I didn't use Joan Hayes' audit for this as a, my -- the  
6 final number for this report.

7 Q. You testified that you used Joan Hayes' information,  
8 correct?

9 A. I used Joan Hayes' -- I used it, the information that Joan  
10 Hayes -- that CASI under Karron had asked Joan Hayes to provide  
11 to me for this audit.

12 Q. Did you independently check whatever documentation Joan  
13 Hayes provided for you, to you?

14 A. I did select a sample of the invoices to trace the sample  
15 of the ledger entries to trace to the invoices for this report.

16 Q. Isn't it a fact that Joan Hayes had no general ledger?  
17 There was no general ledger for CASI; is that a fact?

18 A. There were -- CASI used Quick Books, and so whatever the  
19 system of quick books there were -- there were -- there were  
20 things for Quick Books.

21 Frank Spring, I guess Frank Spring was creating a new  
22 general ledger or a new ledger system or journal entry system  
23 for CASI at the time I was there.

24 When I called to schedule the initial appointment,  
25 CASI couldn't meet with me because they were in the process of

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Riley - direct

1 redoing their books and records, and so it delayed my visit for  
2 a couple of weeks to give them time.

3 When I arrived, the new books weren't completed yet,  
4 so they were going to be completed the next day so I waited  
5 till the next day.

6 The -- I used the records that they provided and,  
7 including Joan Hayes, what Joan Hayes had provided to come up  
8 with the numbers for this. I did not take Joan Hayes' report  
9 and copy the numbers to come up with this.  
10 Q. In fact, you never -- do you have, either from your own  
11 work, from Frank Spring's -- he was a book keeper of some sort?  
12 A. Yes.

13 Q. Or from Joan Hayes, a general ledger, ma'am?

14 A. I know I have some summaries provided different categories,  
15 and I think there are some ledgers there. I know I have to --

16 Q. Did you do --

17 A. Yes.

18 Q. -- a reconciliation? There were checking accounts, were  
19 there not?

20 A. Yes when I -- for the audit?

21 Q. Yes. There were checking accounts, CASI had a number of  
22 checking accounts, did it not?

23 A. Yes.

24 Q. Did you do a bank reconciliation of the various bank  
25 accounts of CASI?

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Riley - direct

1 A. For this, for this audit?

2 Q. Right.

3 A. No.

4 MR. RUBINSTEIN: Your Honor, I object.

5 MR. KWOK: Sidebar, your Honor?

6 THE COURT: Yes.

7 (Continued on next page)

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864ZKAR6

Riley - direct

1 (At the sidebar)

2 MR. KWOK: Grounds?

3 MR. RUBINSTEIN: The grounds -- these are some  
4 summary, some documents that she doesn't have, that she's  
5 unaware of, and she came up with these numbers from where we  
6 will never never know because we don't have original source  
7 documents to look at, judge. She clearly relied upon other  
8 people's work to determine the cost. It's hard to believe that  
9 someone could be an auditor and not reconcile bank accounts  
10 that probably had less than 500 checks in total, for the period  
11 that we're talking about.

12 MR. KWOK: Your Honor, we offer her as an expert  
13 witness under Federal Rules of Evidence 703. Underlying  
14 documents that an expert rely upon does not have to be  
15 admissible. That's what auditors do, they don't necessarily  
16 have the underlying documents. They go to sites to look at the  
17 company books. They don't necessarily take those documents  
18 back with them after they've completed an audit. I believe  
19 that's what happened in this case, that she wasn't -- went to  
20 CASI to look at the books. She tried to verify some of it to  
21 have some confidence about the accuracy of the numbers. She  
22 issued a report. It doesn't mean she took away those documents  
23 and attached them as some sort of attachment to her report.  
24 She went there, saw things, talked to people make some  
25 determinations and issue a report. The fact that she doesn't

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864ZKAR6 Riley - direct

1 have the underlying documents should not be an issue, and she's  
2 an expert. Under Rule 703 the underlying documents --

3 THE COURT: I'm going to allow her to testify because  
4 a auditor does not have to take the records with them or copies  
5 of the records. They may have to take copies of portions that  
6 they rely on. But for illustration purposes, the auditor does  
7 not have to -- just has to use general accepted auditing  
8 methods to verify the books and accounts of the company.

9 MR. KWOK: I think that's exactly right.

10 THE COURT: It's the company, it's the company's  
11 account that the auditor is verifying.

12 MR. RUBINSTEIN: Here he didn't have accounts, Judge  
13 with all due respect, so that's why --

14 THE COURT: I don't know. I mean that's another  
15 matter.

16 MR. KWOK: You can cross on it.

17 MR. RUBINSTEIN: I don't want --

18 THE COURT: They're supposed to have an accountant,  
19 sorry, as I understood it.

20 (Continued on next page)

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864ZKAR6

Riley - direct

1 (In open court)

2 MR. KWOK: Your Honor, government offers government  
3 exhibit 60.

4 THE COURT: Government 60 is admitted in evidence.

5 (Government's Exhibit 60 received in evidence)

6 MR. RUBINSTEIN: I object to the --

7 THE COURT: I understand. I haven't read it, so I  
8 don't know what it is. It may be a valid objection after I see  
9 it.

10 MR. KWOK: Do you still have the document in front of  
11 you?

12 THE COURT: Did you use your ordinary auditing  
13 procedures in reviewing the books of --

14 THE WITNESS: Yes.

15 THE COURT: CASI?

16 THE WITNESS: Yes.

17 THE COURT: Whatever books you were presented with?

18 THE WITNESS: Yes, yes.

19 THE COURT: Those included the report of what was her  
20 name, Miss Hayes?

21 THE WITNESS: Yes.

22 THE COURT: And also materials supplied by the book  
23 keeper?

24 THE WITNESS: Yes.

25 THE COURT: Was there -- so, and they were in ledger

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864ZKAR6

Riley - direct

1 form so you could check them?

2 THE WITNESS: Things were in ledger forms.

3 THE COURT: I see, all right.

4 MR. KWOK: Thank you, your Honor.

5 Q. Ms. Riley, what's the date of this report?

6 A. July 2003.

7 Q. Directing your attention to pages three and four, let's put  
8 up page -- if we could put them side by side.

9 Ms. Riley, what are the findings that you reached in  
10 this audit report?

11 A. That, that CASI had not met the matching cost share  
12 requirement; that CASI had excess drawdowns of over \$200,000,  
13 and that they had submitted a --

14 THE COURT: Sorry, what was the first thing you said?

15 THE WITNESS: That they had not met the matching  
16 requirements of the NIST award.

17 THE COURT: Second.

18 THE WITNESS: That they had excess drawdowns of over  
19 \$200,000.

20 Q. And the third?

21 A. The third, they had filed inaccurate financial status  
22 report with us.

23 Q. Ms. Riley, let's take this one at a time now. What does it  
24 mean when you said the company had not contributed matching  
25 funds?

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864ZKAR6

Riley - direct

1 A. That they, they had not -- they had not contributed  
2 anything to the, to the NIST award.

3 Q. What are they supposed to do?

4 A. They were supposed to contribute 4.57 percent of the funds.

5 MR. RUBINSTEIN: I'm sorry, I didn't digit hear that.

6 A. Of the project cost.

7 MR. RUBINSTEIN: I missed the percentage, your Honor.

8 THE WITNESS: The 4.57 percent.

9 Q. And what in fact happened?

10 A. They hadn't contributed anything to the cost, the cost  
11 share to the project.

12 Q. And, Ms. Riley, how did you arrive at this conclusion?

13 A. By reviewing the, the records of what, and transactions of  
14 the ledgers.

15 Q. The documents provided to you by the company?

16 A. Right, the documents provided.

17 Q. The second issue you mentioned was the excessive drawdowns.  
18 Can you explain to us what that means?

19 A. They had, they had -- they had received NIST grant funds  
20 that had been spent on CASI expenses instead of the project  
21 expenses. They --

22 THE COURT: You dropped your voice, I can't hear you.  
23 You'll have to speak up.

24 THE WITNESS: They had, they had -- they had drawn  
25 down funds from NIST that were spent on CASI business expenses

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864ZKAR6

Riley - direct

1 or not allowable NIST project expenses.

2 Q. In other words, expenses not approved?

3 MR. RUBINSTEIN: Objection, your Honor, to --

4 Q. Can you explain what you mean by that?

5 THE COURT: Your objection's sustained, form of the  
6 question, Mr. Kwok.

7 MR. KWOK: I apologize, your Honor.

8 Q. What do you mean by that?

9 A. They had spent -- the money had been spent on rent or  
10 utilities or on things that were not allowed per the grant  
11 budget.

12 Q. And what is the approximate size of this excess drawdown?

13 A. 205,000.

14 Q. And again how were you able to make that determination?

15 A. From reviewing their books, from the ledgers -- from the  
16 books that were provided to us by CASI.

17 Q. Finally, you mentioned financial status reports. First of  
18 all, what are financial status reports?

19 A. Grant recipients are required to submit financial status  
20 reports quarterly to inform NIST how they spent the grant  
21 monies that they drew down for that quarter.

22 Q. And what type of information are they supposed to report on  
23 these financial status reports?

24 A. Financial status report includes the amount of matched  
25 share they provide, and the amount of cost spent with the NIST

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864ZKAR6

Riley - direct

1 grant project.

2 Q. What was your audit finding about CASI's financial status  
3 reports?

4 A. They reported the drawdown amounts they received from NIST,  
5 not the expense of what they spent drawdowns on.

6 Q. Can you --

7 A. Not the cost. They didn't -- they didn't report how they  
8 spent the grant monies.

9 Q. What, in fact, did they report?

10 A. They reported the drawdown, the monies they received.

11 Q. Any other issue with the financial status reports?

12 A. They reported a match share. They did not give a match  
13 share.

14 Q. And how were you able to make those determinations?

15 A. By reviewing the financial status reports.

16 Q. Is that what you do as an auditor?

17 A. Yes.

18 Q. Ms. Riley, what, if any, recommendations do you make in  
19 your audit report?

20 MR. RUBINSTEIN: I object to that, your Honor.

21 Q. If you could direct us to the page of the document?

22 A. It's on page five.

23 THE COURT: I don't see the relevance of that.

24 MR. KWOK: Your Honor, the audit report contains a  
25 recommendation or series of recommendations.

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864ZKAR6

Riley - direct

1 THE COURT: The --  
2 MR. RUBINSTEIN: That's what I objected to, Judge.  
3 THE COURT: That's what he objected to, the  
4 recommendation part.  
5 MR. RUBINSTEIN: 60.  
6 MR. KWOK: The relevance, the relevance is --  
7 THE COURT: I don't want to hear your argument in  
8 front of the jury.  
9 MR. KWOK: Could we have a sidebar?  
10 THE COURT: I'll have it at the sidebar if you want to  
11 half it. It seems to me it's --  
12 (Continued on next page)

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864ZKAR6

Riley - direct

1 (At the sidebar)

2 MR. KWOK: Your Honor, this audit report is the first  
3 of I believe three audit reports that this auditor prepared.  
4 She made a series of recommendations in her first audit report,  
5 and then later on she went back to the company to audit the  
6 books for a second time. And I'm intending to show that the  
7 recommendations that she made the first time were not  
8 undertaken even six months later when she went back to the  
9 company.

10 THE COURT: That has nothing to do with whether or not  
11 this man improperly used --

12 MR. KWOK: It goes to his intent, it goes to his  
13 intent because the first report told him what was wrong, and  
14 when six months later she came back, the same thing stays the  
15 same. It goes to his intent.

16 MR. RUBINSTEIN: I submit, your Honor, it doesn't go  
17 to his intent that he -- the audit report recommendation. He  
18 hired a separate accountant who submitted responses to Riley,  
19 to argue the issue of her findings, as to her number of  
20 findings. So I submit it doesn't go to his intent, and they  
21 know it. They have this, one of the exhibits.

22 THE COURT: Why can't you deal with it in other ways  
23 instead of dealing with the recommendations, which involves  
24 suspension, which doesn't seem to me to be relevant to the  
25 issue in the indictment. Why can't you raise the issue about

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864ZKAR6 Riley - direct

1 whether this report and its recommendations were, were provided  
2 to Mr., Dr. Karron, and whether she had further discussions  
3 with him. And they had another audit, et cetera, and you can  
4 get into what the subject matter is of those items at that  
5 time, not get into the recommendation of suspension by --

6 MR. KWOK: The witness is actually not going to  
7 answer, I don't believe, that I recommended the grants be  
8 suspended. She is going to say, I told him that he needs to  
9 amend his financial status report and make the cost --

10 THE COURT: But you asked for the recommendation. She  
11 isn't being asked what she told him.

12 MR. KWOK: Okay, can I ask that?

13 THE COURT: The form of your question.

14 MR. KWOK: Okay. I understand. Thank you, your  
15 Honor.

16 THE COURT: All right.

17 MR. RUBINSTEIN: Your Honor, it's past four.

18 THE COURT: Yeah, well, let's just let him get this  
19 question in.

20 MR. RUBINSTEIN: Sure.

21 (Continued on next page)

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864ZKAR6

Riley - direct

1 (In open court)

2 THE COURT: Reframe your question, Mr. Kwok.

3 MR. KWOK: Yes, your Honor.

4 Q. Ms. Riley, what, if any, actions did you suggest the  
5 company undertake to improve the negative audit findings in  
6 this report?

7 MR. RUBINSTEIN: Objection, your Honor.

8 THE COURT: What actions? I'll allow it.

9 The jury is instructed to disregard anything about  
10 negative or possibly, what have you.

11 What actions did you take with respect to Dr. Karron  
12 and CASI after you made this report? Did you provide him with  
13 a copy?

14 THE WITNESS: Oh, this report? Yes, we provided a  
15 copy of this report to CASI.

16 THE COURT: And what action did you take thereafter?

17 Q. What actions did you ask that the company take?

18 A. We asked that they reimburse NIST for the funds drawn down  
19 in excess of the federal amount, and we asked that they provide  
20 corrected financial status reports for the period of 2002 and  
21 for -- and financial status reports for the 2003 year.

22 Q. After you issued this audit report, what, if any, further  
23 involvement did you have with CASI?

24 A. We went -- we did a -- we did another audit in December of  
25 2003.

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864ZKAR6

Riley - direct

1 Q. Why do you do another audit in December of 2003?

2 A. Well, we had always planned on issuing -- this is a short  
3 report, our reports normally are longer, and provide more  
4 information in questioned costs, so we always planned on  
5 issuing another report. But CASI had obtained another CPA for  
6 the audit when we were ready to go back, and so -- it created  
7 new books and records, and so we had another site visit.

8 Q. Approximately, how much time passed between this second  
9 visit and the issuance of that report?

10 A. The second -- the report was issued in July, and the second  
11 visit was in December 2003, so about five months.

12 Q. Now, by this time had CASI undertaken any of the actions  
13 that you suggested?

14 A. They had --

15 MR. RUBINSTEIN: Objection, your Honor.

16 THE COURT: I think this may be a good point to  
17 suspend for the day, sorry. But I'm aware of obligation, other  
18 obligations that I have to carry out and have to be carried out  
19 by the attorneys. So I think we better suspend ten minutes  
20 after four. Thank you for being so prompt this morning. I  
21 hope you get off to a good start tomorrow at 9:30, and we'll  
22 see you.

23 I hope you get coffee and cookies or whatever they  
24 serve you.

25 (Jury exits the courtroom)

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864ZKAR6

Riley - direct

1 (In open court; jury not present)

2 THE COURT: Oh, did you give Ms. --all right, you can  
3 step down.

4 THE WITNESS: Okay.

5 THE COURT: Is there anything else to take up? How  
6 long will with this witness take?

7 MR. KWOK: I believe approximately 45 minutes to an  
8 hour.

9 THE COURT: It's awful long. Go ahead. I'm just  
10 trying to move this along.

11 MR. KWOK: I understand, but as I told your Honor we  
12 believe that we may be able to move this case a little bit.

13 While we're here, should we address the objection that  
14 Mr. Rubinstein just made?

15 THE COURT: Yes, you better.

16 MR. KWOK: It's our position that that goes to his  
17 intent, as Ms. Riley testifies she suggested a number of  
18 actions that the company undertake, including paying back the  
19 money. And five months later she went back to issue the more  
20 fulsome report, and at that time it was still outstanding. So  
21 I understand part of defense's argument is they did everything  
22 they could to remedy the situation, and that's simply not the  
23 case. And it goes to the defendant's state of mind. And if he  
24 intends to argue that there were some other people involved who  
25 were advising the defendant, he can cross on that. But that

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864ZKAR6

Riley - direct

1 seems to be a major primary issue in this case and we should be  
2 allowed to have the witness testify to that, in fact.

3 THE COURT: Well, testify to what went on. I follow  
4 your argument. But is there any testimony about whether  
5 there -- funds were available for the repayments that the  
6 government wanted?

7 MR. KWOK: Well, I believe there's going to be  
8 testimony that all -- the CASI money comes from the NIST grant,  
9 and the company had promised to put some cost share within, in  
10 the proposal and it was never paid.

11 THE COURT: 280,000 is a lot more than the cost share.  
12 It's a little hard to pay 280,000 and meet your cost share too.  
13 They --

14 MR. KWOK: But the witness, I believe, is going to  
15 testify that the company has paid zero, that --

16 THE COURT: What?

17 MR. KWOK: Had not paid back anything, even after the  
18 issuance of her report, not the full amount, just nothing at  
19 all. I believe that's going to be the testimony, and I think  
20 that goes to the intentional misapplication of grant funds.

21 THE COURT: They have funds; the company have funds?

22 MR. KWOK: The company does not have independent  
23 sources of funds, that's the Government's position. However,  
24 the reason they didn't have funds is because they misspent all  
25 those funds that they had already drawn down, so it's not --

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864ZKAR6

Riley - direct

1 THE COURT: How does it go to the intent?

2 MR. KWOK: Well, it goes to the intent because they  
3 didn't even try to put in the cost share that they had promised  
4 the government that they would.

5 THE COURT: They didn't have any funds, how could they  
6 do it?

7 MR. KWOK: Well, I believe Mr. Karron -- Mr.  
8 Rubinstein elicited testimony from some witnesses that at some  
9 point in time the defendant mortgaged, took out a second  
10 mortgage of his apartment to repay \$60,000.

11 THE COURT: Is the apartment owned by CASI?

12 MR. KWOK: No. It was owned by Dr. Karron personally.

13 THE COURT: The grant was to CASI, was it not?

14 MR. KWOK: It was. But if Mr. Rubinstein, as he tried  
15 to elicit from some of these witnesses, that at some point in  
16 time he, although after the period alleged on the face of the  
17 indictment, he took out a second mortgage on his home to try to  
18 pay back some of that money that he misapplied, to suggest that  
19 he tried to remedy the situation, he puts that issue squarely  
20 at play and we should be allowed to counter that suggestion.

21 THE COURT: Oh, but you're making a claim that -- I  
22 don't know what you're making. I don't know the nature of the  
23 full case, but you can't just -- the government made the grant  
24 not to Dr. Karron, but the government made the grant to CASI.

25 MR. KWOK: That's correct, your Honor. But the reason

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864ZKAR6

Riley - direct

1 the company did not have funds was because it had been already  
2 misspent all those funds.

3 THE COURT: That's all right, but they overspent.

4 MR. KWOK: I'm sorry?

5 THE COURT: They did, they overspent.

6 MR. KWOK: Intentionally misspent. The only basic  
7 point I'm trying to elicit from this witness is the defendant  
8 knew about these problems. He undertook some of the remedial  
9 actions that she recommended; namely, to revise the financial  
10 status report that we saw to correct the cost share amount that  
11 they falsely reported to the government where they didn't pay  
12 anything they had reported that they had paid ten's of  
13 thousands of dollars, but they never paid that money back, and  
14 that's an integral part of what went on at the company, that --

15 THE COURT: They didn't have the funds to pay it back.  
16 They spent it.

17 MR. KWOK: But they continued to draw -- actually,  
18 they -- I, I don't think that's quite true, because the company  
19 continued to drawdown ATP money.

20 THE COURT: But you have to convince me -- I'll have  
21 to hear it -- you'll have to convince me promptly that  
22 argument, but --

23 MR. KWOK: As I said a moment ago, I believe Mr.  
24 Rubinstein had suggested in the past two days that at some  
25 point in time Dr. Karron took out a second mortgage on his home

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864ZKAR6

Riley - direct

1 to try to pay back the money that he --

2 THE COURT: Tell me where, show me in the record. I  
3 don't recall him saying that in this case on trial. If he --  
4 maybe one of your cohorts does. I don't remember him saying  
5 that. I'm aware of the fact that there was a mortgage, but --

6 MR. KWOK: We will go get the transcript.

7 THE COURT: I'm not sure about this whole theory of  
8 this evidence proving the -- being admissible. So you better  
9 have something for me in the morning.

10 MR. KWOK: We will do that. And --

11 THE COURT: In writing so I can read it, or tonight if  
12 you want to read the cases that you're relying on.

13 MR. KWOK: Very well, your Honor. And in the  
14 alternative, I will go back to revisit the testimony that I  
15 intend to elicit and maybe we can avoid the whole problem by  
16 just moving quickly through the audit reports without dwelling  
17 too much on the recommendation portions of the report, because  
18 there's other ways we can show what we need to show.

19 THE COURT: I'm having trouble with this whole theory  
20 that the failure to repay may be evidence of his intent in  
21 mispending the money.

22 MR. KWOK: Even if --

23 THE COURT: I'm having trouble with that, so you'll  
24 have to give me cases, maybe Mr. Rubinstein's office can too,  
25 since he's got his assistant here today.

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864ZKAR6

Riley - direct

1 MR. RUBINSTEIN: We have another question that might  
2 help that, Judge, but that's when we finish with this first.  
3 It's more in the housekeeping nature.

4 MR. KWOK: I will do some research and try to give  
5 your Honor case law.

6 But the only other point I would make on this point is  
7 that even if it does not go to his intent, it goes to the basic  
8 facts of what happened to the money. She's going to --

9 THE COURT: It doesn't go to basic. Whatever happened  
10 to the money, happened to the money. There may be, there may  
11 be clarification as to. But the conversations with Dr. Karron  
12 don't have anything to do with what happened to the money, as I  
13 understand it. I mean, she may have gotten further, further  
14 materials from the new auditor, the new accountants or what  
15 have you, but I'm having trouble with the, this element of the  
16 case.

17 MR. KWOK: We'll submit a letter to the Court.

18 THE COURT: I don't know the other witnesses you have.

19 MR. RUBINSTEIN: Your Honor, in order to facilitate  
20 what your Honor suggested of hopefully helping the Court in  
21 resolving the issue, there is a card that the security took  
22 that permits us to use the internet, and we would need a --  
23 it's a Sprint PCS card that -- in other words, they don't let  
24 you bring in a computer that gives you access to the internet,  
25 but actually that would be --

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864ZKAR6

Riley - direct

1 THE COURT: Why do we need the internet?  
2 MR. RUBINSTEIN: We want to be able to go into Westlaw  
3 and, you know, do some research and stuff.  
4 THE COURT: Oh-- don't -- better not do it here,  
5 that's all.  
6 MR. RUBINSTEIN: Okay, Judge. Thank you.  
7 THE COURT: All right. Are we all done?  
8 MR. KWOK: Yes, thank you.  
9 (Adjourned to June 5, 2008 at 9:30 a.m.)

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10

GOVERNMENT EXHIBITS

11

Exhibit No.	Received
12 47 . . . . .	325
13 40, 40A, 41, 41A, 42, 42A, 43, 43A, 44, 45 and	333
14 48 . . . . .	340
15 2000 and 2001 . . . . .	451
16 [Exhibits]*[received] . . . . .	461
17 900 . . . . .	461
18 60 . . . . .	477

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DEFENDANT EXHIBITS

20

Exhibit No.	Received
21 F . . . . .	433

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24

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865ZKAR1

1 UNITED STATES DISTRICT COURT

1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

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3 UNITED STATES OF AMERICA, New York, N.Y.

3

4 v. S2 07 CR 541 (RPP)

4

5 DANIEL B. KARRON,

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6 Defendant.

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8 June 5, 2008

9 9:20 a.m.

9

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10 Before:

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11 HON. ROBERT P. PATTERSON, JR.,

12

12 District Judge

13

13

14 APPEARANCES

14

15

United States Attorney for the

16

Southern District of New York

16

BY: STEVEN KWOK

17

CHRISTIAN EVERDELL

17

Assistant United States Attorneys

18

18

RUBINSTEIN & COROZZO, LLP

19

Attorneys for Defendant

19

BY: RONALD RUBINSTEIN

20

20

Also Present: Rachel Ondrik, U.S. Dept. of Commerce

21

Kirk Yamatani, U.S. Dept. of Commerce

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865ZKAR1

1 (In open court; jury not present)

2 THE COURT: We have several matters to take up.

3 MR. RUBINSTEIN: First of all, I want to tell the  
4 Court that Dr. Karron is here. I picked him up and drove him  
5 here myself, as I promised your Honor I would. He's doing  
6 something --

7 THE COURT: He's here?

8 MR. RUBINSTEIN: Yes, he is. I brought him here.  
9 Much to my chagrin, I picked him up and deposited him. But  
10 he's making a call for me now, so he's -- he consented to be  
11 excused during the legal, any legal arguments we make here.

12 THE COURT: You consent to his absence?

13 MR. RUBINSTEIN: Yes, your Honor.

14 THE COURT: For these arguments? All right, thank  
15 you.

16 Now, we had some issues about whether the Government's  
17 Exhibit 2,000, and 2,001 were 3500 material that were not  
18 produced to the defendant.

19 MR. RUBINSTEIN: Yes, your Honor. And the reason for  
20 that is that when I was cross-examining --

21 THE COURT: It came up in cross as a result of your  
22 cross-examination.

23 MR. RUBINSTEIN: Yes, because I had never been  
24 provided with those documents, so I was totally unaware.

25 THE COURT: Why is it 3500 material?

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1           MR. RUBINSTEIN: Well, just as all the other financial  
2 statement revisions was 3500 material that was turned over of  
3 this witness.

4           THE COURT: It's not a financial statement, as I read  
5 it. But why is it 3500 material?

6           MR. RUBINSTEIN: It's the same as -- it was a revised  
7 financial statement. The witness testified that she had  
8 received financial statement -- in other words, I showed that  
9 the financial statements that the government had in evidence  
10 were submitted August 13th, 2003. The witness said that she  
11 had seen earlier ones. We didn't have any earlier ones. We  
12 had the ones August 13th, and I -- and she said she had them in  
13 her file. So obviously the government has a whole file that  
14 they never turned over, never made available either on Rule 16  
15 or under 3500 material as to this witness, and then they  
16 introduce it. And it's my fault because I was doing something  
17 else at the time, and I should've known when they came up with  
18 a number like 2,000, that's what got my interest, it was a new  
19 number sequence in this case and --

20           THE COURT: Well, let me hear from the government.

21           MR. EVERDELL: Well, your Honor, a few things. I  
22 think your Honor's right, I don't see how these are her  
23 statements. These are revised financial reports that somehow  
24 she recalls seeing, so I don't see how these become her prior  
25 statements.

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1           THE COURT: Well, they're proposed -- what were they  
2 exactly? They're proposed financial statement revisions, is  
3 that what they are?

4           MR. EVERDELL: These were these financial status,  
5 quarterly financial status reports.

6           THE COURT: Financial, proposed financial status  
7 reports.

8           MR. EVERDELL: Right.

9           THE COURT: Which were not approved.

10          MR. EVERDELL: There, as the witness testified, there  
11 was some discussion about proposed financial status reports  
12 with the defendant. And she recalls seeing these and having  
13 other, other proposed revised financial status reports that she  
14 saw in the grant file. So these, I don't think, are her  
15 statements. And plus the fact that I believe the issue is  
16 waived as well because defense counsel didn't object when I  
17 showed it to him and only came up after the fact, so.

18          THE COURT: Well, these are not statements by her or  
19 do they contain statements by her? If they're witness  
20 statements, I have a problem. I remember there was some  
21 notation on one of them as I recollect.

22          MR. EVERDELL: There was some are arithmetic notations  
23 and there was a notation down at the bottom of one of them,  
24 that's correct. I'm not sure if it came out whose those were.

25          THE COURT: Hers, I believe --

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1 MR. EVERDELL: Yeah.

2 THE COURT: -- is the testimony.

3 MR. EVERDELL: In addition, your Honor, for the 3500  
4 material we wrote a letter to defense counsel saying that,  
5 because discovery was so voluminous in this case, that if we  
6 had already provided it in discovery, we weren't going to  
7 provide it again at separate 3500 material. We did provide a  
8 copy of the grant file in discovery, and you know, I mean --

9 THE COURT: You did provide the grant file? I thought  
10 they were included.

11 MR. EVERDELL: It would have. Your Honor, I confess  
12 that when we tried to look through the discovery last night to  
13 see if we can see these exact documents that we showed  
14 yesterday, the discovery copy, the Bates stamped discovery  
15 copy, I confess we couldn't find them in the Bates stamped  
16 discovery copy.

17 The issue is that the grant file was copied several  
18 years ago when the agents went to D.C. to copy the grant file,  
19 that was what we produced. And, apparently, these were not  
20 copied, for whatever reason.

21 The agents at the table had her own copy of the grant  
22 file that she requested some, a little bit later, just because  
23 the copy portion that we produced was -- it wasn't organized as  
24 effectively as she would have liked it to be, so she just  
25 requested another copy of it. That's what we were using

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1 yesterday when I was told of these documents. So I had assumed  
2 that because we had produced the grant file, that those  
3 documents were also included in the grant file. Apparently, in  
4 my review of the discovery last night, I don't see them.

5 But I raise it that, you know, this only came up on  
6 cross-examination as the defendant was trying to apparently  
7 making it seen like Ms. Snowden wasn't doing her job properly.  
8 I hadn't intended to bring these to the jury's attention at  
9 all. And plus this is a conversation she had with the  
10 defendant himself, so this isn't really any great surprise on  
11 the part of the defendant. She's testifying about discussions  
12 she had with him about additional revisions to the financial  
13 status reports. So this isn't really a great surprise to him  
14 or shouldn't have been. So while I admit I think because of  
15 the review of discovery last night I can't say for certain that  
16 these particular two documents were turned over to the  
17 defendant in discovery, I don't think this is any great  
18 surprise to the defendant. And given the nature of how the  
19 documents came up and the fact that defense counsel didn't  
20 object when we first tried to introduce them, I don't think  
21 this is -- should be an issue.

22 THE COURT: He didn't object until after they were  
23 admitted in evidence.

24 MR. EVERDELL: Correct, your Honor.

25 THE COURT: I don't know what the law is on that,

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1 under those circumstances.

2 MR. RUBINSTEIN: Your Honor, I would have no problem  
3 if your Honor wanted to give a limiting instruction that Rule  
4 3500 requires the government to turn over all the material  
5 about -- that a particular witness who was going to testify and  
6 that, you know, and it wasn't done as to Exhibit 2,000 and  
7 that's --

8 THE COURT: Those documents were overlooked? Is that  
9 what you want?

10 MR. EVERDELL: Your Honor, I don't -- until yesterday  
11 when this issue came up, I don't think we knew that those  
12 documents, those notations were Hope Snowden' notations. We  
13 saw them in the grant file because it looked like these were  
14 revisions and we wanted to, because the issue came up on  
15 cross-examination, it was clear that there were other revisions  
16 to the financial status reports. And so we thought, okay, this  
17 is a copy of the grant file, we thought we produced the grant  
18 file so we're going to introduce these 'cause we don't want it  
19 to look as if Hope Snowden wasn't doing her job, which is  
20 clearly what the --

21 THE COURT: Telling the truth is --

22 MR. EVERDELL: Wasn't telling the truth, which is  
23 exactly what the defense counsel was I think trying to do with  
24 that cross-examination. So it was done in good faith. I don't  
25 think a limiting instruction to that effect is appropriate

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1 here. Plus the issue of waiver, I mean these were things that  
2 we showed to the defendant and he did not object to it. He had  
3 the opportunity to review them before I elicited them from the  
4 from the witness, so.

5 MR. RUBINSTEIN: That's not exactly accurate, your  
6 Honor. They didn't give me a copy. They didn't hand me a  
7 copy.

8 THE COURT: They --

9 MR. RUBINSTEIN: They --

10 THE COURT: They did show them to you, Mr --

11 MR. RUBINSTEIN: No. They offered to show them and I  
12 did not look at them. It's my fault.

13 THE COURT: I saw them show them to you.

14 MR. RUBINSTEIN: I didn't look at --

15 THE COURT: Whether you examined them is another  
16 issue.

17 MR. RUBINSTEIN: I conceded that, Judge.

18 THE COURT: What?

19 MR. RUBINSTEIN: I conceded that from the outset, from  
20 yesterday, today. I'm not suggesting they didn't offer it to  
21 show me them, okay. And as I said, I was late in making the  
22 objection. You know, just as the defendant's not entitled to a  
23 perfect trial, he's not entitled to a perfect lawyer.

24 THE COURT: I want to see those documents, but I want  
25 to -- and then I want to consider what to do. Because I think

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1 it's acknowledged that the two documents were apparently not at  
2 the discovery materials turned over.

3 Now whether, whether the discovery materials -- and I  
4 think the witness testified, I may be wrong, that the  
5 handwritten notations on the document were hers. So I suppose  
6 they could be considered prior statements of a witness.

7 MR. EVERDELL: Your Honor, I mean the written  
8 statements there were not the subject of testimony. The  
9 testimony was --

10 THE COURT: That's true.

11 MR. EVERDELL: -- was did she in fact have discussions  
12 with the defendant about additional revised financial status  
13 reports.

14 THE COURT: They weren't the subject of her direct  
15 testimony.

16 MR. EVERDELL: Correct.

17 THE COURT: She was responded to on cross-examination.

18 MR. EVERDELL: Exactly. I did not intend to get into  
19 this at all until Mr. Rubinstein was, apparently, trying to  
20 test her credibility and I felt like this was something I  
21 needed to address on redirect.

22 The issue really was did she have discussions with the  
23 defendant about additional revised financial status reports,  
24 which she testified to before I even introduced the documents.  
25 She said, yes, I had discussions with him; yes, there were

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1 further revisions. I was simply trying to find documentary  
2 evidence because the defense counsel was trying to -- was  
3 asking the witness, did you make any notes. She said yes. So  
4 I looked to see if we had evidence of this, and it appears  
5 there was. Now, it's true that these were not -- apparently  
6 were not turned over in discovery, but --

7 THE COURT: I think you misspoke about any notes. But  
8 what he asked her was if there had been any other financial  
9 status reports in between the two, the financial status report  
10 of the first one and the so-called revised one of 8/13  
11 something or other.

12 MR. EVERDELL: That's correct, your Honor.

13 THE COURT: Well, I want to consider this and see  
14 what, if anything, should be done about it.

15 MR. EVERDELL: And your Honor, additionally --

16 THE COURT: Now let's -- we've got a jury waiting  
17 here. We got another problem.

18 Mr. Juror number eight will not be in, Mr. Naveen  
19 sprained his ankle and has difficulty walking and will not be  
20 in today, so we'll have to replace him.

21 All right. Now, there's another issue we have that  
22 came at the end of the day, right?

23 MR. KWOK: That's correct. I will not press that line  
24 of questioning, your Honor.

25 THE COURT: Not refer to it in summation either; not

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1 make that argument in summation.

2 MR. KWOK: Certainly. But the only other thing I want  
3 to flag for the Court, I believe your Honor now has a proposed  
4 new stipulation which I will read into the record before we  
5 call the witness.

6 THE COURT: All right. Otherwise are we ready?

7 MR. KWOK: The government is ready.

8 MR. RUBINSTEIN: Defense is ready, your Honor. If I  
9 can just run out and so I don't have to run out later.

10 THE COURT: Maybe I should too.

11 MR. EVERDELL: Should we get the witness, your Honor?

12 THE COURT: You better have the witness ready.

13 (Recess)

14 THE COURT: Please be seated.

15 All right, we're bringing in the jury.

16 (Jury entering)

17 THE COURT: Good morning. Please be seated. Good  
18 morning, ladies and gentlemen.

19 THE JURY: Good morning.

20 THE COURT: Mr. Monteagudo received a message from  
21 Mr. Naveen John, juror number eight. He sprained his ankle  
22 yesterday and cannot walk this morning, and as a result he will  
23 not be in today. And, accordingly, I'm going to ask Ms. Chang,  
24 the first alternate juror, to take his place as juror number  
25 eight and we'll proceed with the trial, and I guess we're still

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1 on the direct examination with Ms --

2 MR. KWOK: Ms. Riley, your Honor.

3 THE COURT: I'm sorry.

4 MR. KWOK: Ms. Riley.

5 THE COURT: Ms. Riley, yes.

6 MR. KWOK: May I proceed?

7 THE COURT: Ms. Riley, you're reminded you're still  
8 under oath. The jury is reminded that on the succeeding day  
9 when the witness takes the stand, I'm obliged, as a matter of  
10 court procedure, to remind them they're still under oath.  
11 Please.

12 MR. KWOK: Thank you, your Honor.

13 BELINDA RILEY,

14 called as a witness by the government,

15 having been previously sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. KWOK:

18 MR. KWOK: Your Honor, before I proceed with the  
19 direct examination, I would like to read a proposed stipulation  
20 into the record.

21 THE COURT: All right, sir.

22 MR. KWOK: United States of America versus Daniel B.  
23 Karron, defendant S2 07 Crim. 542. It is hereby stipulated and  
24 agreed by and among the United States of America by Michael J.  
25 Garcia, United States Attorney for the Southern District of New

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865zkar1 Riley - direct

1 York, Steve Kwok and Christian Everdell, Assistant United  
2 States Attorneys of counsel, and defendant Daniel B. Karron, by  
3 and with the consent of his attorney Ronald Rubinstein,  
4 Esquire, paragraph three of Government exhibit 900 is amended  
5 to read as follows: The documents marked as government exhibit  
6 0 are the credit card statements for the American Express cards  
7 of Computer Aided surgery, Inc. CASI, and Daniel B. Karron, the  
8 defendant, from in or about October 2001 to in or about April  
9 of 2003.

10 It is further stipulated and agreed that government  
11 exhibit 90 and this stipulation marked for identification as  
12 government exhibit 900A, may be received in evidence as  
13 government exhibits at trial, and it is signed New York, New  
14 York, June 5th, 2008 on behalf of the United States by Steve  
15 Kwok and on behalf of Daniel B. Karron, Ronald B. Rubinstein,  
16 Esquire.

17 THE COURT: All right, Government's exhibit 90 is  
18 admitted in evidence. I think Government's exhibit 900 was  
19 admitted in evidence.

20 THE DEPUTY CLERK: This is 900A?

21 THE COURT: Excuse me. Government's exhibit 900A is  
22 admitted in evidence.

23 (Government's Exhibit 900A received in evidence)

24 MR. KWOK: Thank you, your Honor.

25 BY MR. KWOK:



865zkar1

Riley - direct

1 Q. Good morning, Ms. Riley.

2 A. Good morning.

3 Q. Before we broke yesterday you mentioned you went back to  
4 CASI to do a second audit; is that right?

5 A. Yes.

6 Q. When did you go back to that, to do that second audit?

7 A. In December of 2003.

8 Q. So how long was that between your first audit and this  
9 time?

10 A. About five months.

11 Q. Where did you go to conduct this second audit?

12 A. To his accountant, Mel Spitz's office in Manhattan.

13 Q. In conducting your second audit, what materials did you  
14 examine?

15 A. I examined the books and records provided by Mel Spitz.

16 Q. So are these materials that you examined for the second  
17 audit different or the same from the materials you relied on  
18 the first time?

19 A. It was different ledgers. The invoices or whatever would  
20 been the same, but the ledgers were new.

21 Q. Did there come a time when you completed this second audit?

22 A. Yes.

23 Q. When was that, approximately?

24 A. I think the report was probably issued in February or  
25 March 2004.

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Riley - direct

1 Q. And what period did your second audit cover?

2 A. It covered the period 10/1, 2001 through June 27th, 2003.

3 THE COURT: What date in 2003?

4 THE WITNESS: June 27th, when the award was suspended.

5 Q. Did you issue a report after the second audit?

6 A. Yes.

7 Q. Ms. Riley, if you could take a look at the stack of  
8 documents in front of you. I believe there's one marked for  
9 identification government exhibit 61?

10 A. Yes.

11 THE COURT: 61 for identification?

12 MR. KWOK: That's correct, your Honor.

13 THE COURT: It's not admitted in evidence yet, ladies  
14 and gentlemen.

15 Q. Do you recognize this document, Ms. Riley?

16 A. Yes.

17 Q. Who prepared that document?

18 A. I did.

19 Q. And what is it?

20 A. It's the draft report that we issued as a result of the  
21 December 2003 review of CASI's records.

22 Q. Is that the report you just referred to?

23 A. Yes.

24 MR. KWOK: Government offers exhibit 61.

25 MR. RUBINSTEIN: Your Honor, except for conclusions, I

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865zkar1 Riley - direct

1 have no objection, your Honor.

2 THE COURT: Exhibit 61 is admitted in evidence. It's  
3 kept in the regular course of business by the agency; is that  
4 correct?

5 THE WITNESS: I'm sorry, what?

6 THE COURT: This report is kept in the regular course  
7 of business by the Office of Inspector General?

8 THE WITNESS: Yes, yes.

9 THE COURT: And it's the regular course of business to  
10 keep these, this report --

11 THE WITNESS: Yes.

12 THE COURT: -- in its records?

13 THE WITNESS: Yes.

14 THE COURT: All right, I'll allow it.

15 MR. KWOK: Thank you, your Honor.

16 THE COURT: Exhibit 61 is admitted in evidence.

17 (Government's Exhibit 61 received in evidence)

18 Q. Now, Ms. Riley, I direct your attention to page seven of  
19 that document. If you could put that up on the screen.

20 THE COURT: What I have is page seven -- Mr -- I don't  
21 have a page seven to that document, 61. I have -- I have in  
22 61 --

23 MR. KWOK: You have to keep flipping to -- the initial  
24 pages don't have numbers on it, and then there are little one,  
25 little two, and then --

865zkar1

Riley - direct

1 THE COURT: Those are marked draft.

2 THE WITNESS: Yes.

3 MR. KWOK: Yes.

4 THE WITNESS: It's a draft report.

5 THE COURT: It's not a final report.

6 THE WITNESS: Right. The final --

7 MR. KWOK: I can -- I'm happy to explain that at  
8 sidebar.

9 THE COURT: Not you explain it, let the witness  
10 explain it.

11 MR. KWOK: Okay. I will lay some foundation, your  
12 Honor.

13 THE COURT: She's the witness, not you.

14 Q. Ms. Riley, can you explain the difference between a draft  
15 report and a final report?

16 A. Yes. We issue the draft -- we issue a draft report and  
17 give the grantee an opportunity to respond to our findings and  
18 any errors we may have in our numbers, our wordings or any --  
19 and then we issue a final report and include their response to  
20 our draft report.

21 Q. Thank you.

22 THE COURT: So you want page seven of the draft report  
23 that's accompanying the --

24 MR. KWOK: Yes.

25 THE COURT: -- that is attached to exhibit 61?

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Riley - direct

1 MR. KWOK: That's correct, your Honor, page seven of  
2 the draft report, exhibit 61, we're just waiting for it to be  
3 up on the screen. Can we blow that up.

4 Q. Ms. Riley, what are the findings that you reached?

5 MR. RUBINSTEIN: I object to this. There's no  
6 foundation.

7 THE COURT: Objection overruled.

8 A. We determined that the government was -- we found that the  
9 government -- the refund was due the federal government of  
10 \$582,000, approximately.

11 Q. Now, if we could go two pages after that. It's appendix  
12 one, page one of eight. What are some of the examples of the  
13 funds that you disallowed?

14 A. Funds that were used to pay for rent, internet --

15 MR. RUBINSTEIN: I can't hear the witness, your Honor.  
16 I'm sorry.

17 THE COURT: I'm sorry, I'm sorry?

18 MR. RUBINSTEIN: I can't -- I couldn't hear the  
19 witness.

20 THE WITNESS: I'm sorry.

21 THE COURT: I think you're too -- I think you're too  
22 close -- Robert is not here to.

23 THE WITNESS: Oh, if I sit back, is this better?

24 MR. RUBINSTEIN: Thank you.

25 THE COURT: It's better if you speak up.

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865zkar1 Riley - direct

1 THE WITNESS: Okay.

2 THE COURT: All right.

3 THE WITNESS: It sounds loud to me. Okay.

4 Monies that were spent for rents, internet --

5 THE COURT: Keep talking into the mike. As soon as  
6 you start turning looking around to the Court Reporter your  
7 voice gets muffled.

8 THE WITNESS: Okay.

9 A. For rent, internet, utilities, and certain other CASI  
10 expenditures.

11 Q. And I direct your attention to page eight now of the  
12 report, the one page previous to the one we just looked at.  
13 Directing your attention to the third full paragraph. What  
14 finding did you make there?

15 A. That on October 26 CASI received grant funds of 100 and --

16 THE COURT: October 26 of what year?

17 THE WITNESS: Oh, of 2001, CASI received grant funds  
18 of \$150,000, and they immediately wrote Dr. Karron a check for  
19 \$75,000 as an advance on salary and paid back rent of \$2,000 a  
20 month for the period, January 2000 through September of 2000,  
21 which was prior to the award of the grant.

22 Q. And what did you conclude about these series of  
23 transactions?

24 MR. RUBINSTEIN: Objection, your Honor.

25 THE COURT: I think you need --

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865zkar1 Riley - direct

1 MR. KWOK: Your Honor --

2 THE COURT: Objection -- I think you need a foundation  
3 question, Mr. Everdell. First, did she -- was this based on  
4 any --

5 MR. KWOK: Certainly, your Honor.

6 THE COURT: On what did she base this conclusion.

7 Q. Ms. Riley, before you conducted this audit, did you have  
8 occasion to review the terms and conditions of the ATP grant?

9 A. Yes, I did.

10 Q. And what did you conclude about these series of  
11 transactions?

12 A. The rent would be an indirect cost, which would be  
13 unallowable on that, but that was also prior to the award so it  
14 would not be allowed.

15 THE COURT: Robert, would you fix the mike so it's in  
16 the right spot here. We're having trouble hearing her voice.  
17 Just so she gets up to it close and then it's all --

18 THE WITNESS: Do I need to sit back?

19 THE DEPUTY CLERK: She's also got -- looking at  
20 documents so it's sort of hard. She's up closer. It's okay.  
21 Keep --

22 THE WITNESS: Okay.

23 THE DEPUTY CLERK: Right where you are. I'm going to  
24 move your water right here.

25 THE WITNESS: Okay.

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865zkar1

Riley - direct

1 THE DEPUTY CLERK: You should be okay. It's okay.

2 Q. I'm sorry, can you continue with the answer? The question  
3 was, what did you conclude about the series of transactions?

4 A. That the rent payments were -- would have been preaward  
5 cost and not allowable, but they were also indirect costs that  
6 they would not have been allowable costs. And the advance, we  
7 don't, we don't -- we considered this like that he used it as a  
8 personal loan account. You're not -- you don't, you don't pay  
9 advance salary out of grant cost.

10 Q. If you could speak up, Ms. Riley, that would be very  
11 helpful.

12 A. Okay.

13 Q. Ms. Riley, do you know whether the grant -- the defendant  
14 gave a written response to your audit report?

15 A. Yes, he did.

16 Q. And how do you know that?

17 A. Because it was sent to me, or to our office.

18 Q. And did you issue a final report after reviewing the  
19 defendant's response?

20 A. Yes, we did.

21 Q. I'm showing you what is next in the pile, I believe, marked  
22 for identification government exhibit 62. Do you know what  
23 that is?

24 A. Yes.

25 Q. What is it?

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865zkar1

Riley - direct

1 A. It's our final report that we issued.

2 Q. Who prepared the document?

3 A. I did.

4 MR. KWOK: Government offers exhibit 62.

5 MR. RUBINSTEIN: Same limited objection, your Honor,  
6 as to opinions of this witness.

7 THE COURT: This is kept in the regular course of  
8 business by the agency.

9 THE WITNESS: Yes, sir.

10 THE COURT: All right. I'll allow it, 62 in evidence.

11 (Government's Exhibit 62 received in evidence)

12 Q. Ms. Riley, after this audit report, exhibit 62, did you  
13 conduct a third analysis of CASI's bank accounts?

14 A. Yes, I did.

15 Q. What did you do?

16 A. After I was provided the bank account records for the, for  
17 the year-and-a-half period of the grant, and I scheduled out  
18 them, the checks by payee, amount, date, and the electronic  
19 funds transfers were taken from the bank statements.

20 Q. What bank are we talking about?

21 A. Chase.

22 Q. And these bank statements belonged to what person or what  
23 entity?

24 A. CASI.

25 Q. Did you also review the bank statements of Dr. Karron

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Riley - direct

1 personally?

2 A. Yes, I did.

3 Q. How about Dr. Karron statements?

4 A. Yes, the American Express statements for the CASI business  
5 account and for one of the accounts for Donald Karron only.

6 Q. Did you review any invoices?

7 A. Yes, there were some invoices.

8 Q. Did CASI have one account or multiple accounts?

9 A. There were four CASI business accounts.

10 Q. And how did you treat these multiple accounts in your  
11 analysis?

12 A. In my analysis --

13 THE COURT: What kind accounts are we talking about?

14 THE WITNESS: Checking.

15 THE COURT: Checking accounts. There were four  
16 checking accounts?

17 THE WITNESS: Yeah, yeah. There may have been --  
18 yeah, there were four checking accounts, and then a personal  
19 account had a savings account and a personal account.

20 Q. And how do you treat CASI's multiple business accounts?

21 A. I treated them as one bank account.

22 Q. And why did you do that?

23 A. Because all -- the majority of the deposits were from the  
24 NIST ATP grant, and there was a lot of transfers between the  
25 accounts.

865zkar1

Riley - direct

1 Q. Now, in terms of the information that you relied on, how  
2 does this analysis differ or the same from your, the materials  
3 you relied on in your audit reports?

4 A. The audit report I relied on the whatever books and records  
5 or ledgers that were provided by CASI. For the analysis of the  
6 checking account, I was relying just on the checks.

7 Q. Ms. Riley, I'm showing you -- in, front of you the box  
8 marked already in evidence as government exhibit 80.

9 THE COURT: I'm confused, Mr. Kwok. If we used the  
10 exhibit numbers, I'd be much happier, but when you fail to use  
11 the exhibit numbers I think it's confusing and not clear to the  
12 jury what the witness is talking about.

13 MR. KWOK: I will use the exhibit number. I  
14 apologize, your Honor.

15 THE COURT: All right.

16 Q. I'm directing your attention, Ms. Riley, to exhibit 80,  
17 which is the box in front of you, if you could stand up?

18 THE COURT: Exhibit 80 isn't admitted in evidence.

19 MR. KWOK: It's by stipulation, your Honor.

20 THE COURT: Oh, all right.

21 A. Okay. Yes.

22 THE COURT: And what does exhibit 80 consist of so  
23 that you don't -- we know what we're talking about?

24 THE DEPUTY CLERK: Move those folders.

25 BY MR. KWOK:

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865zkar1 Riley - direct

1 Q. Ms. Riley, what is exhibit 80?

2 A. 80 -- exhibit 80 is Dr. Karron's personal checking accounts  
3 and savings account.

4 Q. How about government exhibit 81?

5 A. 81 is the business checking accounts, the four business  
6 checking accounts.

7 THE COURT: Four checking?

8 THE WITNESS: Yes, sir. It's through -- there is a  
9 CASI business account, and then there's NIST project business  
10 account, and then there's a CASI corporation -- CASI has  
11 changed its -- become an LLC Corporation, and there's, so  
12 there's also a NIST LLC corporation account.

13 Q. So, and what is government --

14 A. They were just changing different entities.

15 Q. And what is government exhibit 90, 90?

16 A. 90?

17 Q. It's to your right?

18 THE COURT: Just so I'm clear, in 81 there are four,  
19 those four accounts were in 81, am I right, Ms. Riley?

20 THE WITNESS: I'm sorry, what?

21 THE COURT: The four accounts that you just mentioned  
22 the CASI business account, the CASI LLC business account, the  
23 NIST --

24 THE WITNESS: NIST --

25 THE COURT: CASI NIST accounts and CASI's NIST LLC

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865zkar1 Riley - direct

1 account --

2 THE WITNESS: Yes.

3 THE COURT: -- are all part of exhibit 81, is that  
4 correct?

5 THE WITNESS: Yes, yes.

6 THE COURT: All right.

7 THE WITNESS: Okay.

8 Q. Now turning to exhibit 90 already in evidence, what is  
9 that?

10 A. This is the American Express statements for the CASI  
11 accounts.

12 THE COURT: It's a what?

13 THE WITNESS: American Express account.

14 THE COURT: In the name of?

15 THE WITNESS: It's -- there are various American  
16 Express accounts and --

17 THE COURT: In whose name?

18 THE WITNESS: The Computer Aided Surgery, and Dr --  
19 there's one in D. B. Karron.

20 THE COURT: Dr. Karron?

21 THE WITNESS: Yes.

22 THE COURT: That's two.

23 THE WITNESS: Oh, they're the same. They're --  
24 they're various account numbers with the same name.

25 THE COURT: They're various --

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865zkar1 Riley - direct

1 THE WITNESS: Doctor D. B Karron Computer Aided  
2 Surgery, there is an account number three --

3 THE COURT: I couldn't understand you.

4 THE WITNESS: Doctor D. B. Karron Computer Aided  
5 surgery, there's an account number 37834901721500, and also  
6 account 378349017217006.

7 THE COURT: And in whose name is that?

8 THE WITNESS: Doctor D. B. Karron, Computer Aided  
9 Surgery.

10 THE COURT: Any other accounts in the American  
11 Express.

12 THE WITNESS: Yes.

13 THE COURT: Exhibit 90?

14 THE WITNESS: Also for Dr. D.B. Karron --

15 THE COURT: I'm sorry?

16 THE WITNESS: Another one under that same name is  
17 378349017216008.

18 THE COURT: In the name of?

19 THE WITNESS: Dr. D.B. Karron, Computer Aided Surgery.

20 THE COURT: Any others?

21 THE WITNESS: There is also under Dr. D.B. Karron  
22 Computer Aided Surgery 378349017218004.

23 THE COURT: Any others?

24 THE WITNESS: These two --

25 THE COURT: I'm sorry?

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865zkar1

Riley - direct

1 THE WITNESS: This, these -- also in this there are  
2 sections that are for other people like for Lee Gurfein where  
3 it's not --

4 THE COURT: Tell us which ones you reviewed.

5 THE WITNESS: Okay. So then also there's a personal  
6 Dr. D.B. Karron for 371543567491006, and one for Dr. D.B.  
7 Karron 372893053176002.

8 THE COURT: And what about the ones for the other  
9 people you say are part of 90?

10 THE WITNESS: They're in -- let's see. They're in  
11 part of the statement.

12 THE COURT: I'm sorry?

13 THE WITNESS: They're like the one, like account  
14 number Dr. D.B. Karron.

15 THE COURT: We can't remember those numbers so you  
16 have to tell us what you're doing.

17 THE WITNESS: Okay. So included in some of the  
18 accounts there's a, for Dr. D.B. Karron, Alicia Gurfein and  
19 Charles Desala, credit cards under the account number or the  
20 main account number.

21 THE COURT: You mean were separate credit cards issued  
22 under the --

23 THE WITNESS: Under the same billing account number  
24 they had -- yeah, they had three -- this one credit card  
25 account number had three separate credit cards that appeared on

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865zkar1 Riley - direct

1 that bill for that account number, so it's associated with.

2 THE COURT: I see. Who are they attributed to?

3 THE WITNESS: Alicia Gerfein and Charles Desala.

4 Q. Ms. Riley --

5 MR. KWOK: Sorry, your Honor.

6 THE COURT: Anything else?

7 Q. Yes. Ms. Riley, now I'm showing you government Exhibit  
8 100. Do you recognize what that is, already in evidence?

9 A. Yes. It's invoices from Datavisioin.

10 Q. How about government Exhibit 101?

11 THE COURT: What are invoices from data bases?

12 THE WITNESS: Invoices from Datavisioin is a --

13 THE COURT: Datavision.

14 THE WITNESS: It's a computer company.

15 THE COURT: All right. Supplier of some sort?

16 THE WITNESS: Yes, equipment supply, equipment person.

17 THE COURT: All right.

18 Q. Government Exhibit 101, do you have that document in front  
19 of you?

20 A. Yes.

21 Q. Do you recognize it?

22 A. It's invoices from Homefront Hardware.

23 Q. Are those invoices as well?

24 A. Yes.

25 Q. How about government Exhibit 102 already in evidence?

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865zkar1

Riley - direct

- 1 A. 102, invoices from General Computer Service.
- 2 Q. Government exhibit 103 already in evidence?
- 3 A. Invoices from Silicon Graphics Incorporated.
- 4 Q. Government Exhibit 104?
- 5 A. Invoices from Silicon City.
- 6 Q. Now, Ms. Riley, before I showed you those documents, had
- 7 you looked at those documents before?
- 8 A. Yes.
- 9 Q. And what did you do with those documents?
- 10 A. I reviewed the things on the documents and traced them back
- 11 to the source records. I also initialed and dated that I had
- 12 seen them.
- 13 Q. Did you summarize the information in the bank records, the
- 14 American Express card statements and the invoices, in a summary
- 15 document?
- 16 A. Yes, they're summarized in my review of the checks and bank
- 17 statements.
- 18 Q. I'm showing next what's been marked for identification as
- 19 government Exhibit 110?
- 20 A. 110.
- 21 THE COURT: Okay.
- 22 Q. Do you recognize what that is?
- 23 A. Yes.
- 24 Q. Who prepared that document?
- 25 A. I did.

865zkar1

Riley - direct

1 Q. What is the summary of?

2 A. It's a summary of the bank, analysis of the bank statements  
3 and checks.

4 Q. Of?

5 A. Of CASI, and the four bank accounts of CASI.

6 MR. KWOK: Government offers government Exhibit 110?

7 MR. RUBINSTEIN: No objection, your Honor.

8 THE COURT: Let me just see. I want to know exactly  
9 what it is. 110 is the summary of which exhibits, the 70 --  
10 does it also include credit cards?

11 THE WITNESS: Yes, sir, it does.

12 THE COURT: So it's 70 and 80. And what about -- and  
13 81, is that right?

14 THE WITNESS: The credit cards are 90, and the checks  
15 were 81 -- the checks were 81, right. Checks are 81. So it  
16 includes 90, the American, the American Express bills and 81,  
17 the checks from the four bank accounts.

18 THE COURT: 90 you mean?

19 THE WITNESS: Yeah.

20 THE COURT: What?

21 THE WITNESS: No.

22 THE COURT: Includes 90?

23 THE WITNESS: 90 is, what is 90? Oh, yes, the  
24 American Express -- yes, the American Express bill is 90, 90  
25 and 81.

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Riley - direct

1 THE COURT: Just 90 and 81, not 70, not 80.

2 THE WITNESS: 70 is --

3 Q. If I can ask the next question, I think it would clear it  
4 up.

5 Ms. Riley, did you prepare a separate summary for the  
6 information contained in government exhibit 80?

7 A. Yeah, the separate, 80 --

8 Q. What is government exhibit 80?

9 A. Oh, yes, I did. Dr. Karron's checks has a separate  
10 summary.

11 THE COURT: All right. 80 is a separate one. What is  
12 in this one, 110; what is included in 110?

13 MR. KWOK: Let me ask the witness.

14 THE COURT: That's what I'm asking the witness.

15 Q. Ms. Riley, does government exhibit 110 include government  
16 exhibit 81, government exhibit which is the CASI bank account  
17 statement, and government exhibit 90, which are the American  
18 Express card statements?

19 A. Yes.

20 Q. And does what is marked for identification as government  
21 exhibit 111, include a summary of government exhibit 80, which  
22 is the Chase Bank account statements for Dr. Karron,  
23 personally?

24 A. Yes, plus it also includes the personal credit card  
25 statements that were included in 90 American Express.

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Riley - direct

1 MR. KWOK: Government offers --

2 THE COURT: I'm absolutely confused as to what it  
3 covers. I don't follow what she's covering in each of these  
4 exhibits.

5 THE WITNESS: Okay.

6 THE COURT: She doesn't seem to make it clear.

7 THE WITNESS: Okay.

8 THE COURT: 90 is included in both, apparently.

9 Q. Ms. Riley, why is government exhibit 90 included in both  
10 summaries?

11 A. Government exhibit 90 has business credit cards and it's  
12 statements, and it also has a couple of personal credit card  
13 statements. So the business credit card statements are  
14 included, along with exhibit 81, the business checks and  
15 analyzed, and the personal credit card statements in 90 are  
16 included with the personal bank account checks for Dr. Karron  
17 and in Exhibit 110, 111 -- 111.

18 THE COURT: So is the stipulation you're making  
19 between Exhibit 110 and 111 is that one is for personal records  
20 of Dr. Karron and the other is for the business records of --  
21 that or business accounts of CASI?

22 THE WITNESS: Yes, sir; yes, sir.

23 THE COURT: Which Dr. Karron may have had drawing  
24 power over as a --

25 THE WITNESS: Right.

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865zkar1 Riley - direct

1 THE COURT: -- an executive of CASI?

2 THE WITNESS: Yes, he did have drawing power as an  
3 executive of CASI.

4 THE COURT: So which is which, the personal -- Dr.  
5 Karron, personally, is 110?

6 THE WITNESS: Right.

7 THE COURT: And CASI and Dr. Karron business wise is  
8 111; is that right?

9 THE WITNESS: No, Dr. Karron personal is 111, because  
10 on the personal --

11 THE COURT: All right.

12 Q. Ms. Riley, just to be clear, government Exhibit 111, isn't  
13 that Dr. Karron's -- summary of Dr. Karron's personal expenses  
14 as reflected in the American Express card statements and his  
15 personal Chase Bank statements?

16 A. Yes.

17 Q. And just to be clear, is government Exhibit 110 a summary  
18 of the business expenses as reflected in the Chase Bank  
19 statements and the bank expenses -- CASI's expenses as  
20 reflected in the American Express credit card statements.

21 A. Yes.

22 MR. KWOK: Government offers 110 and 111.

23 THE COURT: 110 and 111 are admitted without  
24 objection.

25 (Government's Exhibits 110 and 111 received in

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1 evidence)

2 Q. Now, Ms. Riley -- Ms. Moussa, if we could put up government  
3 Exhibit 110 on the screen, which is the summary for CASI  
4 expenses. If we could zoom in on the top half of the page.

5 Ms. Riley, could you tell us what the column headings  
6 of your data base indicate?

7 A. Okay. The first one the ID is just a number assigned by  
8 the computer. The description is the payee of the check. It  
9 was electronic funds transfer, the information from the bank  
10 statement concerning the payee. The date is from the date  
11 that -- the date on the bank statement that the check was  
12 cleared. The -- and the total of the, of the check. The check  
13 memo entries are from, are from -- if there was a check memo on  
14 the account, and for some of the accounts if I -- I may have  
15 gone back to one of the ledgers from the previous audit to get  
16 a check, an entry there. But it normally says per ledger if it  
17 didn't come from the check.

18 THE COURT: I'm sorry, what exhibit is that from? I'm  
19 a step behind you all.

20 MR. KWOK: What is on the screen, your Honor, is  
21 government exhibit 110.

22 THE COURT: And this is not the first page, it's -- oh  
23 it is the first page.

24 THE WITNESS: It is the first page.

25 THE COURT: But it's cut off, is that the problem?

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Riley - direct

1 THE DEPUTY CLERK: They blew up a section of it.

2 THE COURT: You can't -- you're not -- you haven't got  
3 the whole page on there, because it says bank transfer, right?

4 MR. KWOK: That's correct.

5 THE WITNESS: Yes.

6 THE COURT: All right. Okay.

7 MR. KWOK: Ms. Moussa, if we could put up what is  
8 already in evidence, pages from government exhibit 81, which is  
9 the CASI bank statements. If we could zoom in on the top  
10 check. May I approach, your Honor?

11 THE COURT: This is part of what, 80?

12 MR. KWOK: This is exhibit 81. It's not in the jury  
13 binders because it's part of voluminous bank records, but it is  
14 on the screen.

15 THE COURT: All right.

16 MR. RUBINSTEIN: Could I just ask one question, your  
17 Honor?

18 THE COURT: What for? You mean voir dire of some  
19 sort?

20 MR. RUBINSTEIN: Yes.

21 MR. KWOK: It's already in evidence.

22 THE COURT: It's a little late.

23 MR. RUBINSTEIN: Could I ask one question, Judge? It  
24 may help later on.

25 THE COURT: Maybe I'll ask it. Why don't you come up.

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865zkar1 Riley - direct

1 I hate to interrupt.

2 (Continued on next page)

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865zkar1 Riley - direct

1 (At the sidebar)

2 MR. RUBINSTEIN: Each one of these accounts that she

3 mentioned has a different color check. Showing it up here is

4 in black and white. I just want to ask her what color check it

5 is so the jury will know. That way they'll know what account

6 it comes from.

7 THE COURT: Whether she knows what color check?

8 MR. RUBINSTEIN: She has the original.

9 MR. KWOK: We don't -- your accountant did --

10 THE COURT: What?

11 MR. KWOK: That's the way it's provided to us by the

12 bank. It's in evidence in black and white.

13 MR. RUBINSTEIN: Okay, all right.

14 (Continued on next page)

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8657KAR2

Riley - direct

1 BY MR. KWOK:

2 Q. Ms. Riley, do you recognize the documents that are being  
3 displayed on the screen there?

4 A. Yes.

5 Q. What are they?

6 A. They are checks from the Computer Aided Surgery checking  
7 account.

8 Q. Who is the payee?

9 A. Dr. D.B. Karron.

10 Q. For how much?

11 A. \$2,000.

12 THE COURT: Which check are you talking about?

13 Q. Can you tell us the check number?

14 A. The top check, 2977.

15 Q. What does it say on the memo line?

16 A. Rental office, 300 East 33rd Street, Suite 4N.

17 Q. How about the handwritten notation?

18 A. January 2000 rent.

19 MR. RUBINSTEIN: Excuse me?

20 THE WITNESS: January 2000 rent.

21 Q. Can you tell me how that information is reflected on your  
22 database, Government Exhibit 110.

23 A. Exhibit 110, on page 39 of 44. Exhibit 110, page 39 of 44.

24 MR. KWOK: If we could zoom in on the bottom portion  
25 of the page.

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8657KAR2

Riley - direct

1 Q. Could you tell us how the information we just looked at on  
2 the check is reflected here?

3 A. OK. It's under rent on office. Under the description it  
4 has in parens it's got Dr. Karron, and the other thing is his  
5 bank account number that the check was deposited into, his  
6 personal account. It showed that there was a transfer into his  
7 checking account. And the date of the transaction was  
8 10/26/2001.

9 Q. Is that the same or different from the check we just looked  
10 at?

11 A. It's the same.

12 Q. What is the check number reflected on the database?

13 A. 2977.

14 Q. Is that the same check number as we just looked at?

15 A. Yes. And the memo is rent on office per general ledger,  
16 from the check memo, and it's \$2,000. It's the amount for  
17 check number 2977.

18 Q. Now, I'm showing you another page from Government Exhibit  
19 81 which is the CASI bank statement. Do you recognize this  
20 check?

21 A. Yes, it's from the CASI/NIST checking account.

22 Q. What is the check number there?

23 A. 10325.

24 Q. And who is the payee?

25 A. D. Ferrand.

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8657KAR2

Riley - direct

1 Q. And do you see a signature there?

2 A. Yes, it's Dr. Karron.

3 Q. Could you explain to us how this information is reflected  
4 on your database.

5 If we could go back to the database, please.

6 THE COURT: What is the amount of the check?

7 Q. What is the amount of the check?

8 A. \$100. OK. This is on --

9 Q. Could you direct us to the page of the database where that  
10 check is reflected?

11 A. The check number was 10325 on page 37 of 44 on Exhibit 110.

12 MR. KWOK: Can we zoom in?

13 MR. RUBINSTEIN: We're still on 110, are we?

14 THE WITNESS: Yes, Exhibit 110, page 37 of 44.

15 Q. Where should we be looking?

16 A. In the middle of the page. If you look, the check number  
17 it's 10325, so if you look under the check number column it's  
18 down under -- yeah -- you see the notation.

19 THE COURT: I'm sorry. She should be doing the  
20 pointing out to what she is testifying. It shouldn't be you,  
21 Mr. Kwok. All right?

22 A. OK. The check number of 10325 for cleaning office charges  
23 for the week ending 6/22/02 in the amount of \$100. 10325 is  
24 the check number. It was for cleaning offices. The amount is  
25 \$100, and the pay payee Steve Korand, that's shown under the

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Riley - direct

1 description of the column.

2 Q. If we could look at the rest of the page. Under the check  
3 memo.

4 THE COURT: The rest of the page of exhibit -- you are  
5 making a record, Mr. Kwok. The record has to be clear as to  
6 what exhibits you are referring to at all times.

7 MR. KWOK: I apologize.

8 THE COURT: No one can review the record if you don't  
9 mention the exhibit number at all times.

10 MR. KWOK: I am still looking at Government Exhibit  
11 110. I am still looking at page 37 of 44.

12 Q. Now, directing your attention to the top portion of that  
13 page, what appears under the check memo column?

14 A. The check memo is information taken from the memo section  
15 of the check.

16 Q. What does it say on the check memo?

17 A. Oh, cleaning.

18 Q. And what did you base that information on?

19 A. Some of the checks were based on, if they didn't have -- in  
20 order to identify the check and what the check was for, on some  
21 of the checks I looked back at the ledgers that I had gotten  
22 from CASI's audits prepared by either Mel Spitz or for the  
23 check registers I had gotten from the June audit 2003.

24 Q. Ms. Riley, I'm showing you a check from Government Exhibit  
25 81 already in evidence, which is the bank account statements

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8657KAR2

Riley - direct

1 for CASI.

2 Can we put one by one up on the screen?

3 What information is reflected -- what check number is  
4 that, first of all?

5 A. 10330.

6 Q. And what information is next to the memo line of the check?

7 MR. RUBINSTEIN: Sorry. I missed the check number.

8 THE WITNESS: 10330.

9 Q. And what information is reflected next to the memo line of  
10 the check?

11 A. Cleaning office charges for the week ending 6/29/2002.

12 Q. Look at the next check, still Government Exhibit 81. What  
13 is the check number on that check?

14 A. 10325.

15 Q. What is the information reflected next to the memo line?

16 A. Cleaning office charges for the week ending 6/22/02.

17 Q. And directing your attention to the upper left-hand corner  
18 of the check, what does that say?

19 A. Computer Surgery, Incorporated, NIST ATP DMT Program.

20 Q. Let the record reflect these are colored checks.

21 A. I think they're colored, aren't they pink?

22 THE COURT: Do you know?

23 THE WITNESS: Yeah, they're colored.

24 Q. And who is the payee on that particular check?

25 A. The payee is D. Ferrand.

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8657KAR2

Riley - direct

1 Q. What's the amount of the check?

2 A. \$100.

3 Q. Let's look at the next and final check, still Government  
4 Exhibit 81, part of the bank reports. What is the check number  
5 on this check?

6 A. 10509.

7 Q. How about the upper left-hand corner of the check, what  
8 does that say?

9 A. Computer Aided Surgery, Inc. NIST ATP DMT program.

10 Q. And who is the payee on that check?

11 A. D. Ferrand.

12 Q. For how much?

13 A. \$100.

14 Q. And what is the information reflected next to the memo  
15 line?

16 A. Cleaning office charges for the week ending 10/5/2002.

17 Q. What's the signature that appears on that check?

18 A. D.B. Karron.

19 Q. Now, Ms. Riley, a moment ago you mentioned American Express  
20 card statements.

21 A. Yes.

22 Q. How is the information on the American Express card  
23 statements, which is Government Exhibit 90, reflected on your  
24 database?

25 A. The transaction of the credit card is taken from the credit

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8657KAR2

Riley - direct

1 card invoice, but the transaction for paying the credit card  
2 was picked up whenever I analyzed the CASI bank statements.

3 THE COURT: What?

4 THE WITNESS: The payment of the credit card was  
5 already in the database because I had that information when I  
6 reviewed the bank statements, the bank statements and canceled  
7 checks. So the payment was already in the database. I just  
8 added the transactions, the purchase transactions from the  
9 credit card.

10 THE COURT: You just added the information about who  
11 the purchaser was?

12 THE WITNESS: And the amount and the date of the  
13 transaction.

14 THE COURT: I see. So the total payment for the  
15 credit card is already in the database?

16 THE WITNESS: Yes, sir.

17 THE COURT: So, these were just individual --

18 THE WITNESS: Yes.

19 THE COURT: -- transactions.

20 THE WITNESS: Right. And so that it wouldn't show as  
21 a double payment I handled the credit card, I took the credit  
22 card payments out of the deposit withdrawal section of the  
23 database.

24 MR. KWOK: May I approach, your Honor?

25 Q. Ms. Riley, I just handed you pages from Government Exhibit

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8657KAR2

Riley - direct

1 90, which is the American Express card statements. It's in the  
2 jury binders. Now, could you show us an example of how some of  
3 the information in the document that I just handed you is  
4 reflected on your database, Government Exhibit 110.

5 A. OK. If we go to -- does everybody have 90?

6 Q. What page are you looking at in your database, Ms. Riley?

7 THE COURT: What page of 110 are you looking at? Is  
8 that what you're asking her?

9 MR. KWOK: That's what I'm asking the witness.

10 Q. What page of Government Exhibit 110 are you looking at?

11 A. Page 24 of 37 of Exhibit 110. Actually --

12 MR. KWOK: Your Honor, may I direct the witness's  
13 attention to a particular page?

14 THE COURT: Of 110?

15 MR. KWOK: Yes.

16 THE COURT: She said 24 of 37.

17 Q. Is that the correct page?

18 A. I don't think so.

19 THE COURT: It depends on what she is comparing it to.

20 Q. Let me do it this way. Ms. Riley can I direct your  
21 attention to page 29 of 44 of your database. Do you have that  
22 page?

23 A. Page 29 of 44? Yes.

24 Q. OK.

25 THE COURT: Exhibit 110.

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8657KAR2

Riley - direct

1 Q. 29 of 44, Exhibit 110, do you have that page?

2 A. Oh, you're right, OK. I'm sorry. 29 of 44, yes.

3 Q. OK. Let's put your finger on that page, and look back at  
4 the American Express card statements that I just showed you.

5 If we could have that up on the screen, please.

6 Government Exhibit 90.

7 THE COURT: What are you asking to have put up on the  
8 screen.

9 MR. KWOK: Government Exhibit 90, the statement for  
10 August 7, 2002.

11 THE COURT: First page?

12 MR. KWOK: Page 2.

13 Q. Now, looking at the screen, Ms. Riley, and if you could use  
14 your pointer, what transaction is reflected for July 12, 2002?

15 A. I misplaced my pointer.

16 MR. RUBINSTEIN: Are there numbers on the bottom of  
17 the page that I can't see? OK. I have my revised.

18 Q. OK. Ms. Riley, what transaction is reflected -- what is  
19 the first transaction for July 12, 2002?

20 A. July 12, 2002, the American Express shows a charge to Sam's  
21 Noodle Shop in the amount of 29.10. On page 29 of 44 --

22 Q. Let's go through the American Express card statements  
23 first. Let's turn to the next page of the American Express  
24 card statement, Government Exhibit 90, page 3.

25 A. OK.

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8657KAR2 Riley - direct

1 Q. What transaction is shown for July 22, 2002?

2 A. July 22, 2002 there is a charge to Sam's Noodle Shop for  
3 23.55.

4 Q. And is there a charge reflected on the same page,  
5 Government Exhibit 90, page 3 of 7, for August 7, 2002 to the  
6 same vendor?

7 THE COURT: What's your question again?

8 Q. Directing your attention to July 30, 2002, Ms. Riley.

9 A. Oh, yes, on July 30 there is Sam's Noodle Shop for the  
10 amount of 19.45.

11 Q. OK. Now, let's turn back to Government Exhibit 110 that we  
12 just looked at, page 29 of 44. Can you tell us how the  
13 information that we just looked at is reflected on your  
14 database?

15 A. It comes through the date column to July.

16 MR. RUBINSTEIN: Your Honor, excuse me. Are we on  
17 page 24 or 29?

18 THE WITNESS: 29 of 44.

19 MR. RUBINSTEIN: Thank you.

20 A. On July 12 there is a transaction to Sam's Noodle Shop in  
21 the amount of 29.10, and on July 22 there is a transaction to  
22 Sam's Noodle Shop of 23.55, and on July 30, Sam's Noodle Shop  
23 in the amount of 19.45.

24 THE COURT: So, how was this credit card paid for?

25 THE WITNESS: It's paid for out of this account.

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8657KAR2

Riley - direct

1 THE COURT: What account?

2 THE WITNESS: Out of one of the CASI -- at the CASI  
3 accounts. This one --

4 THE COURT: You told us there are multiple CASI  
5 accounts.

6 THE WITNESS: Right. But in my database they are  
7 treated as one account, one big account, because the deposits  
8 come from NIST, from one source.

9 THE COURT: The deposits come from where?

10 THE WITNESS: From NIST, the ATP grant award. There  
11 is a lot of interaccount transfers, but for the most part the  
12 deposits are coming from the grant monies.

13 MR. KWOK: If we could put back up on the screen  
14 Government Exhibit 90, the American Express card statement, the  
15 August 7, 2002 statement, page 1. If we could zoom into the  
16 middle portion of that page there highlighted in gray.

17 Q. What does this statement show regarding payment to the  
18 outstanding credit card balance?

19 A. It shows on July 14, 1,074.91 was received by American  
20 Express from CASI, and on July 29 that American Express  
21 received a payment of \$2,940.01 from CASI.

22 Q. And where did the money come from that paid off these  
23 credit card balances?

24 A. From the CASI/NIST bank accounts.

25 Q. How do you know that?

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8657KAR2

Riley - direct

1 A. OK. Those transactions are reflected on page 3 of 44 of  
2 Exhibit 110.

3 Q. Are you talking about Government Exhibit 110, Ms. Riley?

4 A. Yes, Government Exhibit 110, page 3 of 44.

5 Q. And where are you looking?

6 A. Kind of the middle of the page, under the payments of the  
7 credit card.

8 THE COURT: Sorry. What was that page again?

9 THE WITNESS: 3 of 44.

10 Q. Can you point them out on the screen?

11 A. Yes. It shows that American Express electronic remittance  
12 was made from the CASI bank statement account on 7/15 in the  
13 amount of \$1,074.91 to pay American Express, and that another  
14 electronic remittance was made from the account on July 31,  
15 2002 to pay American Express in the amount of \$2,940.01.

16 Q. Did you base this information on the Chase credit card  
17 statements of CASI?

18 A. This information came from the bank statements and the  
19 payment of the bank statements.

20 Q. Chase Bank?

21 A. Chase Bank.

22 Q. I am handing you a few pages from Government Exhibit 81,  
23 the CASI Chase Bank account statements, which is also in the  
24 jury binders. Directing your attention to the June 22 to July  
25 22 statement period, page 3.

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8657KAR2

Riley - direct

1 MR. RUBINSTEIN: Excuse me. What are those dates?

2 MR. KWOK: I'm looking at Government Exhibit 81, the  
3 Chase statements for CASI, the period from June 22 to July 22,  
4 page 3 of 4.

5 THE COURT: Let the witness point to the area you are  
6 referring to.

7 A. The bank statement shows that on 7/15 there was an American  
8 Express electronic payment in the amount of 1,074.91 from the  
9 Chase bank account.

10 MR. KWOK: And if you could zoom out for a second.

11 Q. Directing your attention to the upper right-hand corner,  
12 under the primary account number, what is the text that's  
13 underneath that?

14 A. It says Computer Aided Surgery, Incorporated, NIST ATP DMT  
15 Program.

16 Q. And directing your attention now to the same exhibit,  
17 Government Exhibit 81, but now we are looking at the next  
18 statement period from July 23 to August 21, 2002, page 3 of 4.  
19 Do you have that page, Ms. Riley?

20 A. Sorry. What page?

21 Q. July 23 to August 21, 2002, that period statement?

22 THE COURT: Where do I find the date?

23 MR. KWOK: It's on the upper right-hand corner of  
24 every page.

25 THE COURT: I see. July what?

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Riley - direct

1 MR. KWOK: July 23 to August 21, 2002, the statement  
2 for that account period.

3 THE COURT: Just one second. So that's six or eight  
4 pages in.

5 MR. KWOK: That's page 3 of 4. It's the page on the  
6 screen.

7 THE COURT: July 23, page --

8 MR. KWOK: It's actually page 10 on the bottom of the  
9 page.

10 THE COURT: Page 10 at the bottom right-hand corner?

11 MR. KWOK: Of the page, yes.

12 THE COURT: Of that statement.

13 MR. KWOK: Of that statement, correct.

14 Q. Do you have that page, Ms. Riley?

15 A. Yes.

16 Q. Directing your attention to the withdrawal and debits  
17 portion of that page, what are you pointing at, Ms. Riley?

18 A. This shows the payment on 7/31, the electronic remittance  
19 to American Express of \$2,940.01. That corresponds to the  
20 amount that we just looked at on the American Express  
21 statement.

22 Q. So, is that the same or different number than the one we  
23 just looked at in the American Express card statement  
24 Government Exhibit 90?

25 A. It's the same number.

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8657KAR2

Riley - direct

1 THE COURT: Same account number.  
2 THE WITNESS: The payment.  
3 THE COURT: Same --  
4 THE WITNESS: -- payment.  
5 Q. When you say same number, what number are you referring to?  
6 A. The same payment, the July 29 on the American Express bill  
7 shows that they received \$2,940.01 from CASI, and the bank  
8 statement electronic remittance shows that this bank account  
9 paid \$2,940.01 to American Express.  
10 THE COURT: All right.  
11 Q. Now, Ms. Riley, other than summarizing information on your  
12 databases, what else did you do in your analysis of the bank  
13 records?  
14 A. Created charts and graphs.  
15 Q. I am showing you what's been marked for identification as  
16 Government Exhibit 112 and 113. They are not yet in evidence  
17 but marked for identification. Do you have that in front of  
18 you, Ms. Riley?  
19 A. Yes, I do.  
20 Q. Do you recognize what they are?  
21 A. Yes.  
22 Q. And what are they?  
23 A. They are pie charts that I created from the bank statements  
24 of CASI.  
25 Q. How did you create these graphs?



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Riley - direct

1 A. I used the information that was in Exhibit 110, the bank  
2 records, to create these graphs.

3 MR. KWOK: The government offers Exhibit 112 and 113.

4 THE COURT: No objection?

5 MR. RUBINSTEIN: No objection, your Honor.

6 THE COURT: 112 and 113 are admitted into evidence.

7 (Government's Exhibits 112 and 113 received in  
8 evidence)

9 Q. Now, let's take them one at a time, Ms. Riley. Let's go  
10 first to Government Exhibit 112. What graph is that of?

11 A. This is a graph of the deposits into the CASI bank accounts  
12 for the period 10/1/2001 through 9/30/2002 which is the first  
13 year of the grant award.

14 Q. And what does the purple area represent?

15 A. It represents the deposits into the account for the NIST --  
16 for the grant money.

17 Q. Was there any other source of funding that's not from the  
18 ATP grant?

19 A. There were a couple of minor deposits, but they were really  
20 credit, refunds to other accounts, so they were used as  
21 offsets, not as deposits. They were refund checks.

22 Q. Now, let's go through Government Exhibit 113. Ms. Riley,  
23 what is this a graph of?

24 A. The CASI business account -- deposits into the CASI  
25 business accounts for the period 10/1/2002 through 6/30/2003,

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Riley - direct

1 which is the nine months of the second year of the award.

2 Q. What does the purple area of the graph represent?

3 A. Deposits of grant monies received by CASI.

4 Q. And how about that line that's breaking up the circle?

5 A. This is miscellaneous other deposits into the account.

6 Q. Ms. Riley, did you prepare any additional graphs aside from  
7 these ones that we just looked at?

8 A. Yes.

9 Q. What did you prepare?

10 THE COURT: What was the amount of those other  
11 deposits into the account?

12 THE WITNESS: The deposits from NIST were \$545,000,  
13 and the miscellaneous deposits were like 1200, 1500, something  
14 really small.

15 THE COURT: Sorry.

16 Q. Ms. Riley, aside from these graphs, did you create any  
17 additional charts and graphs?

18 A. Yes.

19 Q. What did you prepare?

20 A. I analyzed the expenditures from the accounts.

21 Q. I am showing you what have been marked for identification  
22 as Government's Exhibits 114 and 115. Do you have those in  
23 front of you?

24 A. Yes.

25 Q. Do you recognize what they are?

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Riley - direct

1 A. Yes, they are the pie charts that I created for the  
2 analysis of the expenditures.

3 Q. And what documents did you look at to create these graphs  
4 and charts?

5 A. Canceled checks and American Express statements were the  
6 main source documents used to create these.

7 MR. KWOK: Government offers Government's Exhibits 114  
8 and 115.

9 MR. RUBINSTEIN: No objection, your Honor.

10 THE COURT: 114 and 115 are admitted into evidence.

11 (Government's Exhibits 114 and 115 received in  
12 evidence)

13 MR. KWOK: May we publish that to the jury?

14 THE COURT: You say these are expenditures?

15 THE WITNESS: Yes, sir. For 114 and 115 I did  
16 analysis and expenditures.

17 THE COURT: First for the year ended October 10, 2002?

18 THE WITNESS: OK. And that is because of the  
19 breakdown for the fringe benefits for check paid to IRS for  
20 withholdings or whatever, the breakdown I had for check and  
21 fringe benefits, I had an analysis for the year prepared by one  
22 of the accountants that I could reconcile the numbers -- the  
23 check payments through October 10. So, it doesn't --

24 THE COURT: 114 and 115 are admitted in evidence.

25 Q. Now, Ms. Riley looking first at Government Exhibit 114,

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Riley - direct

1 what is the pie chart at the upper left-hand corner?

2 A. The upper left-hand corner pie chart is just a breakdown of  
3 the budget, the NIST budget, grant budget to CASI, and it has  
4 the budget categories by amount.

5 THE COURT: Which budget?

6 THE WITNESS: For the year one CASI/NIST ATP budget.

7 THE COURT: Approved the first one or the subsequent?

8 THE WITNESS: Amendment to approved budget.

9 Q. So, staying with that graph for a second, just walk us  
10 through an example, for example, what subcontractor shows.

11 A. Subcontractor shows that the NIST-approved budget had a  
12 budget of \$250,000 for subcontractor costs for year one for the  
13 NIST ATP grant award.

14 Q. How about, for example, Dr. Karron's salary, according to  
15 the approved budget?

16 A. The approved budget had allowed -- Dr. Karron's salary for  
17 the approved budget was \$175,000.

18 MR. KWOK: OK. Now let's zoom back out. Let's turn  
19 to the upper right-hand corner of the chart. If we could zoom  
20 that in.

21 Q. What is this chart?

22 A. This chart shows according to the checks. The checks are  
23 the American Express transactions from the CASI business  
24 account. This is a breakdown by the budget categories of how  
25 the checks were written.

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Riley - direct

1 Q. OK. And what is the yellow area of that chart?

2 A. The yellow area for the most part is what is limited by the  
3 budget category. If it was spent over budget, then there is a  
4 portion that's red and a portion that's yellow. It's costs  
5 that are allocable to those budget categories in the analysis  
6 of checks and American Express transactions. Like for the --

7 Q. And what does the red area of the graph represent?

8 A. The red area represents costs that were over budgets, that  
9 were considered indirect costs and nonallowable, like dues and  
10 subscriptions, lawyers, and the rent paid to Dr. Karron, was  
11 not allowable per the budget.

12 MR. KWOK: Let's zoom it back out. Let's turn to the  
13 bottom right-hand corner of the page.

14 Q. What is that the chart of?

15 A. There is a 10 percent budget category adjustment that's  
16 allowed by NIST ATP.

17 Q. What is a 10 percent adjustment? Can you explain that?

18 A. 10 percent of the budget amount can be reallocated from say  
19 subcontractor costs to personnel expense, if you have less  
20 subcontractor costs than you thought.

21 So, this is to show that \$83,000 which could be  
22 reallocated between the budget category if that's the only  
23 thing that made something unallowable, but it was over budget.

24 Q. According to this chart, what is the total of disallowable  
25 amount for year one of the grant period?

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8657KAR2

Riley - direct

1 A. This one shows \$268,638.

2 Q. Let's zoom it back out, and let's focus on the table for

3 now. What does the table show?

4 A. The table shows the budget categories compared to the

5 amount of money spent by CASI, and the difference between what

6 CASI spent and what the budget allowed to be spent, and then it

7 shows the percentage difference.

8 Q. Can you walk us through an example of that.

9 A. Well, for like Dr. Karron's salary the budget was \$175,000,

10 CASI spent \$200,000 for year one, a difference of \$25,488, for

11 a difference of 14.56 percent over.

12 Q. OK. Let's zoom it back out. Let's go back to the upper

13 right-hand corner portion of the page, the pie chart with the

14 red. Does this chart take into account the lack of any cost

15 share that you testified about yesterday?

16 A. No, it doesn't have cost share.

17 Q. What would this chart have looked like if that information

18 had been reflected on the chart?

19 A. Some of the red numbers might be yellow if some of the cost

20 share had been reflected.

21 Q. I'm sorry. Let me rephrase. If you had included in your

22 chart the absence of any cost share that you testified about

23 yesterday, what would this chart look like?

24 A. If I took into consideration that there was no cost share,

25 none of the cost would be allowable, and all other costs would

8657KAR2

Riley - direct

1 be red.

2 Q. Let's go to Government Exhibit 115. What is this a chart  
3 of?

4 A. This is a chart of the same type information for year two  
5 of the award, the nine months of year two.

6 Q. Let's go to the first graph, the upper left-hand corner.  
7 Again, what information is reflected on this chart?

8 A. This is the expenditures by budget category in the NIST  
9 budget award.

10 Q. So, using subcontractor as an example, what is budgeted for  
11 year two?

12 A. \$110,000.

13 Q. Let's go to the full page, to the upper right-hand corner.  
14 And once again, what is this a chart of for year two?

15 A. This is the expenditures from the CASI NIST accounts broken  
16 down by budget category, from the check accounts and the  
17 American Express accounts.

18 Q. What is represented by the red portion?

19 A. The red portion would be costs that would be over the  
20 budget category or maybe not allowable because they are  
21 indirect costs.

22 Q. What are some of those examples?

23 A. The equipment cost over budget here of \$90,169, supply  
24 costs over budget of \$8,800.

25 Q. Let's zoom it back out and look at the chart to the bottom

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Riley - direct

1 right. What is the total disallowed expense that you found for  
2 year two?

3 A. According to this analysis, it would be \$196,504.

4 Q. Once again, what is that little portion that's a little off  
5 to the side?

6 A. It's allowed, the 10 percent rule that you can allow,  
7 allowing for 10 percent adjustment to the budget categories,  
8 there would still be -- there would only be 50,000 of the  
9 196,000 that would be OK.

10 THE COURT: So with the adjustment it would be  
11 \$146,017.

12 THE WITNESS: Right.

13 Q. Now, Ms. Riley, let's go to what's been marked for --  
14 actually what is already in evidence as Government Exhibit 101.  
15 Do you have that document in front of you?

16 A. 101?

17 Q. That's correct.

18 MR. KWOK: It's Government Exhibit 101, your Honor.

19 Q. Do you have that document?

20 A. Yes.

21 Q. Do you recognize it?

22 A. Yes, it's the Homefront Hardware invoice.

23 Q. And did you analyze this document in the course of your  
24 analysis?

25 A. Yes.

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8657KAR2

Riley - direct

1 Q. Were you able to determine how the balances reflected on  
2 these invoices were paid for?

3 A. Yes. They were paid for from the CASI/NIST bank account,  
4 or American Express or except for one transaction for \$301 that  
5 was paid from Dr. Karron's personal credit card account.

6 Q. Aside from that, were there any invoices paid for from Dr.  
7 Karron's personal account?

8 A. Yes, one for \$301.

9 Q. Aside from that, is there anything else?

10 A. No, the rest of them were paid for from the CASI/NIST  
11 account.

12 Q. And how were you able to make that determination?

13 A. I traced the payment back to my database of check payments,  
14 back to the bank statements, to the canceled checks, or to the  
15 American Express statement that paid them.

16 MR. KWOK: Your Honor, at this time the government  
17 would like to read into the record another stipulation marked  
18 for identification as Government Exhibit 901.

19 THE COURT: Yes.

20 MR. KWOK: United States of America v. Daniel B.  
21 Karron, defendant, S1 07 Crim. 541.

22 "It is hereby stipulated and agreed by and among the  
23 United States of America, by Michael J. Garcia, the United  
24 States attorney for the Southern District of New York, Steve  
25 Kwok and Christian Everdell, assistant United States attorneys,

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8657KAR2

Riley - direct

1 of counsel, and defendant Daniel B. Karron, by and with the  
2 consent of his attorney, Ronald Rubinstein, Esq. that:

3 "1. The document marked for identification as  
4 Government Exhibit 120 is an inventory of items seized on or  
5 about June 26, 2007 from 300 East 33rd Street, Apartment 4N,  
6 New York, New York, pursuant to a seizure warrant issued by the  
7 Honorable Douglas F. Eaton, United States magistrate judge of  
8 the Southern District of New York.

9 "2. The item marked for identification as Government  
10 Exhibit 112 corresponds to item 79, GPS system, identified in  
11 Government Exhibit 120.

12 "3. The item marked for identification as Government  
13 Exhibit 122 corresponds to item 20, Sony Cybershot camera  
14 DSC-F707, identified in Government Exhibit 120.

15 "4. The item marked for identification as Government  
16 Exhibit 123 corresponds to item 23, Infocus LCD projector with  
17 mount, identified in Government Exhibit 120.

18 "5. The item marked for identification as Government  
19 Exhibit 124 corresponds to item 18, projector screen,  
20 identified in Government Exhibit 120.

21 "6. The item marked for identification as Government  
22 Exhibit 125 corresponds to item 75, shoe rack, identified in  
23 Government Exhibit 120.

24 "7. The item marked for identification as Government  
25 Exhibit 126 corresponds to item 37, Kitchen Classics blender by

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Riley - direct

1     Waring, identified in Government Exhibit 120.

2             "8. The item marked for identification as Government  
3     Exhibit 127 corresponds to item 46, Large STABILA bubble level,  
4     identified in Government Exhibit 120.

5             "9. The item marked for identification as Government  
6     Exhibit 128 corresponds to item 36, Dust Buster, identified in  
7     Government Exhibit 120.

8             "10. The item marked for identification as Government  
9     Exhibit 129 corresponds to item 82, folding ladder, identified  
10    in Government Exhibit 120.

11            "11. The item marked for identification as Government  
12    Exhibit 130 corresponds to item 41, Porter cable rechargeable  
13    tool set, identified in Government Exhibit 120.

14            "12. The item marked for identification as Government  
15    Exhibit 131 corresponds to items 38 and 39, Porter cable Tiger  
16    Saw quickcharge and two batteries and charger for item 38,  
17    identified in Government Exhibit 120.

18            "13. The items marked for identification as  
19    Government Exhibit 132 correspond to items 42 and 74, set of  
20    three rechargeable flashlights with chargers, and set of two  
21    rechargeable flashlights with chargers, identified in  
22    Government Exhibit 120.

23            "It is further stipulated and agreed that Government  
24    Exhibits 120 and 121, 122, 123, 124, 125, 126, 127, 128, 129,  
25    130, 131, 132 may be received in evidence as Government's

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Riley - direct

1 Exhibits at trial."

2 Signed and dated, signed on behalf of the United  
3 States by Steve Kwok, and on behalf of Daniel B. Karron by  
4 Ronald Rubinstein, Esquire.

5 MR. RUBINSTEIN: What was that exhibit, sir?

6 MR. KWOK: It's marked for identification as  
7 Government Exhibit 901.

8 THE COURT: That's the stipulation number?

9 MR. KWOK: That's correct, your Honor.

10 THE COURT: Well, I will have to have the stipulation,  
11 a copy of the stipulation, to read off the exhibits.

12 Oh, I see it.

13 All right. Exhibits 120, 121, 122, 123, 124, 125,  
14 126, 127, 128, 129, 130, 131 and 132 are received in evidence.  
15 And Exhibit 901 is received in evidence.

16 (Government's Exhibits 120, 121, 122, 123, 124 and 125  
17 received in evidence)

18 (Government's Exhibits 126, 127, 128, 129, 130, 131  
19 and 132 received in evidence)

20 (Government's Exhibit 901 received in evidence)

21 MR. KWOK: Your Honor, may we publish these items to  
22 the jury?

23 THE COURT: Yes, you may.

24 MR. KWOK: Your Honor, may I go through the items one  
25 by one, just read off the exhibit number?

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8657KAR2

Riley - direct

1 THE COURT: Yes, you may.

2 MR. KWOK: Government Exhibit 120, Government Exhibit  
3 122.

4 MR. RUBINSTEIN: Can I see that when you hold it up,  
5 please, Mr. Kwok?

6 MR. KWOK: Government Exhibit 123. Government Exhibit  
7 124 is the screen on the floor. Government Exhibit 125.  
8 Government Exhibit 126. Government Exhibit 127. Government  
9 Exhibit 128. Government Exhibit 129. Government Exhibit 130.

10 MR. RUBINSTEIN: Can I see that, please?

11 MR. KWOK: Government Exhibit 131 and Government  
12 Exhibit 132.

13 BY MR. KWOK:

14 Q. Ms. Riley, did you review additional invoices in the course  
15 of your analysis?

16 A. Yes.

17 Q. I am showing you a document already in evidence as  
18 Government Exhibit 120A. Do you recognize what's already in  
19 evidence as Government Exhibit 120A, Ms. Riley?

20 A. Yes, it's an invoice for Silicon City.

21 Q. How are you able to recognize it?

22 A. The company name is at the top, and I have initialed at the  
23 bottom that I have seen it.

24 Q. Now let's start with the first page. What is the item  
25 shown on the first page of that invoice?

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8657KAR2

Riley - direct

1 A. A ten foot screen for \$2,315.50.

2 Q. And what is the total amount of that invoice?

3 A. \$2,583.05.

4 Q. And what is at the bottom portion of that page?

5 A. At the bottom?

6 Q. That's correct.

7 A. It's Computer Aided Surgery, NIST ATP DMT Program check  
8 number 10220 paid in the amount of \$2,583.05.

9 Q. And what is the check number again for that check?

10 A. 10220.

11 Q. Ms. Riley, I am showing you a page from Government Exhibit  
12 81.

13 THE COURT: What account was that on?

14 MR. KWOK: Sorry, your Honor.

15 THE COURT: 10220, what account is it drawn on?

16 THE WITNESS: It's shown on the bottom of the page of  
17 the invoice.

18 THE COURT: What account was it drawn on?

19 THE WITNESS: From the Computer Aided Surgery NIST ATP  
20 DMT Program account.

21 Q. I am showing you a page from Government Exhibit 81. It's  
22 already in evidence and is marked as page 23 at the bottom  
23 right-hand corner of the jury binders. If we could put that up  
24 on the screen, page 23 of the Chase statements.

25 THE COURT: I'm sorry. I lost track. What's the

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8657KAR2

Riley - direct

1 exhibit number?

2 MR. KWOK: It's Government Exhibit 81, your Honor.

3 THE COURT: Thank you.

4 MR. KWOK: And the bottom is page 23 of the jury  
5 binders.

6 Q. Do you have that page, Ms. Riley?

7 A. Yes.

8 Q. Can you show us where check 10220 appears on that page?

9 A. On the bank statement it appears here dated 6/07/2002 and  
10 it's in the amount of \$2,583.05.

11 Q. Now staying on the same page, focusing your attention to  
12 the upper right-hand corner portion of the page, underneath  
13 primary account number, what does that say?

14 A. Computer Aided Surgery Inc., NIST ATP DMT program.

15 Q. Now let's go back to Government Exhibit 120A, the second  
16 page. What are the items shown on that invoice?

17 A. A projector and a lamp.

18 Q. And how much for either of those items?

19 A. For \$3,482.72.

20 MR. RUBINSTEIN: I didn't hear.

21 A. 3,482.72.

22 THE COURT: Which exhibit is on the board?

23 MR. KWOK: Exhibit 120A is on the board, your Honor,  
24 page 2.

25 Q. What is the shipping cost?

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Riley - direct

1     A.   \$35.

2     Q.   And what is the amount minus the shipping cost?

3     A.   The total amount is \$3,482.72 without the shipping cost.

4     Q.   And let's look at the bottom portion of the same page.  I

5     am still staying with Government Exhibit 120A, page 2.  What is

6     reflected on the bottom portion of that page?

7     A.   OK.  The first Computer Aided Surgery, Inc. name, check

8     number 10127, of \$35 pays the shipping, the \$35 shipping.  And

9     the next check number 10114 for \$3,482.72 on 3/29/2002 pays for

10    the projector and the lamp.

11                 (Continued on next page)

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865ZKAR3 Riley - direct

1 Q. And can you read off the check numbers once again?

2 A. 10114 and 10127.

3 Q. Now, let's go back to government exhibit 81 now, which is  
4 the Chase Bank account statements. Directing your attention to  
5 page 19 of the jury binders, do you have that check?

6 A. Yes, on the bank statement. On check number 10114 dated  
7 4/11, for \$3,482.72.

8 Q. Now about for check number 10127?

9 A. 10127 is for \$35, and it is also on 4/11.

10 Q. Let's zoom out on that page. And once again directing your  
11 attention to the upper right-hand corner of the page, what does  
12 that say?

13 A. It's for the checking account Computer Aided Surgery  
14 Incorporated, NIST ATP DMT program account.

15 Q. Do you know what NIST ATP DMT stands for?

16 A. National Institute of Standards and Technology, Advanced  
17 Technology Program, Digital Morse Theory.

18 MR. RUBINSTEIN: Judge, I can't hear her.

19 A. I'm sorry.

20 MR. RUBINSTEIN: I don't know if anybody else is  
21 having a problem, but she drops her voice.

22 THE COURT: Just --

23 THE WITNESS: Okay.

24 THE COURT: Don't be shy, just speak up.

25 THE WITNESS: National Institute of Standards and

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865ZKAR3 Riley - direct

1 Technology, and Advanced Technology Program, Digital Morse  
2 Theory.

3 Q. Thank you, Ms. Riley. If you could keep your voice up.

4 Let's go back to the invoices, government Exhibit  
5 120A, page three. Can we zoom in on the top of that page.  
6 What item is reflected on this invoice?

7 A. A Garmin Street Pilot, a GPS.

8 Q. How much is that?

9 A. For \$979.99.

10 Q. How about including shipping and taxes?

11 A. \$25 shipping, it's \$1,004.99.

12 Q. And what appears on the bottom of that page? Let's zoom it  
13 back out.

14 A. That, that it it was paid with -- from the Computer Aided  
15 Surgery NIST ATP DMT program account, check number 10598 for  
16 1,004.99 on 11/11, 2002.

17 Q. Let's go back now to government exhibit 81, which is again  
18 the Chase Bank statements for the CASI account, page 25 of the  
19 jury binders.

20 THE COURT: I don't -- page 25 in the jury binder?

21 MR. KWOK: That's correct, your Honor.

22 THE COURT: What's the exhibit number?

23 MR. KWOK: Exhibit number 81, your Honor.

24 THE COURT: And what page of 81?

25 MR. KWOK: It's page 25 of the jury binders on the

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1 bottom of the page.

2 THE COURT: Page 25 of that exhibit?

3 MR. KWOK: That's correct.

4 THE COURT: All right.

5 Q. Do you see that check on this page, Ms. Riley?

6 A. Yes. Check 10598 for on 11/25 for \$1,004.99.

7 Q. Now, let's go back to the invoice government, Exhibit 120A,  
8 the last page. What items are shown on this invoice,  
9 Ms. Riley?

10 A. Okay. This invoice to Datavision has a digital camera with  
11 accessories.

12 Q. And how much altogether for those items?

13 A. \$1,519.95

14 Q. And whose handwriting is that on the bottom of the page, if  
15 we could show that?

16 A. Okay. It's my handwriting. It says HBR. It's saying that  
17 the American Express transaction was on 9/20 of '02.

18 Q. And how much is that transaction?

19 A. American Express is going to be -- \$1,519.95.

20 Q. Okay. Now directing your attention now to government  
21 exhibit 90, 90, looking at the statement, the closing date?

22 THE COURT: Hold on a second.

23 MR. KWOK: Government exhibit 90, your Honor?

24 THE COURT: I have to switch books here. All right  
25 exhibit 90. What page?

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1 MR. KWOK: I'm showing you -- what page is that,?

2 It's page five of eight, exhibit 90.

3 THE DEPUTY CLERK: Five of eight?

4 MR. KWOK: Exhibit 90. I'm looking at the statement  
5 with closing date of October 8th, 2002, page five of eight.

6 THE COURT: All right.

7 Q. Okay. Ms. Riley, directing your attention to September  
8 20th, 2002.

9 A. There is an American express transaction to Datavision for  
10 \$1,519.95.

11 Q. Is that the same amount or different from the amount we  
12 looked at in government exhibit 120A, the invoice just now?

13 A. It's the same amount.

14 Q. And still looking at that page, still government exhibit  
15 90 --

16 THE COURT: Let me just see -- I'm sorry, I missed her  
17 explanation.

18 Q. Ms. Riley, can you --

19 THE COURT: I have the wrong page up now. Let's see  
20 where we are. This is what page? I have five of eight. What  
21 page should I be on?

22 MR. KWOK: It's page five of eight for the statement  
23 with closing date October 8, 2002.

24 THE COURT: I don't have that. That's not --

25 MR. KWOK: We could hand up an extra copy.

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1 THE COURT: There is more than 1 five of eight. All  
2 right, okay. Go ahead.

3 MR. KWOK: Thank you, your Honor.

4 Q. Directing your attention again, Ms. Riley, to September  
5 20th, 2002, what does that show?

6 A. The American Express shows the transaction payment to  
7 Datavision of \$1,519.95.

8 Q. And how does that amount compare to the amount we just  
9 looked at in government exhibit 120A?

10 A. It's the same amount that's on the invoice to Datavision.

11 Q. And still staying with that page, government exhibit 90,  
12 page five of eight, what is the section heading just above that  
13 list of transactions?

14 A. Oh, Expo transactions for Dr. D. B. Karron.

15 MR. KWOK: One moment, your Honor.

16 THE COURT: This is an American Express charge?

17 THE WITNESS: Yes.

18 THE COURT: We don't have how it's paid for yet, do  
19 we?

20 MR. KWOK: I'm sorry?

21 THE WITNESS: This is --

22 THE COURT: We don't know how the credit, the American  
23 Express card credit account was paid for, do we?

24 MR. KWOK: Okay.

25 Q. Ms. Riley, can you show us how that outstanding credit card

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1 balance is paid for.

2 A. Okay, let's see. Okay, it should show up in the -- next  
3 month's payments.

4 Q. Can I direct your attention to government exhibit 110, the  
5 data base?

6 A. Yes.

7 (Pause)

8 Q. Directing your attention to page, government exhibit 110,  
9 page three of 37. What information is reflected for October  
10 18th, 2002?

11 A. That an American express electronic remittance \$5,736.51.

12 THE COURT: From what account?

13 THE WITNESS: From the CASI business account, or the  
14 business accounts from the CASI bank.

15 THE COURT: CASI business, what account? You said  
16 there were more than one, didn't you?

17 THE WITNESS: Yes. It's from the -- this report  
18 doesn't identify it.

19 THE COURT: I'm sorry?

20 THE WITNESS: This report doesn't identify the  
21 specific account, but in my -- I have a note in my data base, I  
22 know which one it's from. It's from the -- it's from one of  
23 the CASI business accounts.

24 Q. And how is this account funded, Ms. Riley?

25 A. From the NIST deposits.

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1 Q. Does it have any source of funding from anywhere else?

2 A. Just a small -- a small a miscellaneous, small amount from  
3 somewhere else.

4 MR. KWOK: No further questions, your Honor.

5 THE COURT: All right.

6 MR. RUBINSTEIN: Good time to take a little recess.

7 THE COURT: Let's take the morning break and come  
8 back.

9 (Recess)

10 THE COURT: All right, let's bring in the jury. Is  
11 Dr. Karron here? You want to call Dr. Karron? No one's going  
12 to go out after him?

13 MR. RUBINSTEIN: Aye aye, sir.

14 THE COURT: You got an assistant.

15 MR. RUBINSTEIN: He's doing something else, Judge.

16 THE COURT: He has no authority.

17 MR. RUBINSTEIN: He's not admitted to the Circuit,  
18 Judge.

19 (Jury entering)

20 THE COURT: All right, please be seated.

21 (Continued on next page)

22  
23  
24  
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865zkar3

1 THE COURT: Mr. Rubinstein, cross-examination.

2 CROSS EXAMINATION

3 BY MR. RUBINSTEIN:

4 MR. RUBINSTEIN: Thank you, your Honor.

5 Q. Good morning, Ms. Riley.

6 A. Good morning.

7 Q. Now, you are working for the OIG's office?

8 A. Yes, sir.

9 Q. And how long have you -- are you working there?

10 A. Since June of '97.

11 Q. And prior to that, you were an Internal Revenue Agent?

12 A. Yes, IRS.

13 Q. IRS?

14 A. Yes.

15 Q. And how long were you with IRS?

16 A. From '86 to '97.

17 Q. Now, did you do field audits or --

18 A. Yes.

19 Q. -- work inside?

20 A. Field audits.

21 Q. And when did you meet people from the federal government on  
22 this case for the first time, I mean people at the prosecution  
23 table here, first time?

24 THE COURT: Are you referring to -- one person's from  
25 the agency, Mr -- are you referring to her?

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RILEY - CROSS

1 MR. RUBINSTEIN: Well, let's start with her.

2 Q. Do you know the lady seated in the middle?

3 A. Yes.

4 Q. And who is she?

5 A. Rachel Ondrik.

6 Q. And the gentleman at the end?

7 A. Kirk Yamatani.

8 Q. And on this case in dealing with this ATP grant to CASI,  
9 when did you meet either or both of them for the first time?

10 A. I don't -- I don't -- I'm not sure.

11 Q. Was it in the year 2003?

12 A. I'm not sure if it was 2003, 2004.

13 Q. Was it in 2008?

14 THE COURT: She said she was not sure whether it was  
15 2003 or 2004.

16 Q. Well, do you have anything that could refresh your  
17 recollection as to when you met these people for the first  
18 time?

19 A. For this case, I don't know -- I'm not sure -- I'm not sure  
20 when that would be.

21 Q. All right. When is the -- before you came here to  
22 testify -- you're from another state, correct?

23 A. Yeah, I'm from Atlanta, Atlanta region.

24 Q. Okay, from the Atlanta region. When did you come here to  
25 testify on this case?

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RILEY - CROSS

- 1 A. For this?
- 2 Q. Yeah.
- 3 A. I came -- you mean for this week for the trial or --
- 4 Q. No. When did you come from Atlanta, Georgia, right;
- 5 Atlanta, Georgia, right?
- 6 A. For the trial, I came Monday.
- 7 Q. Before you came Monday, were you here in preparation for
- 8 your testimony on this trial?
- 9 A. Yes.
- 10 Q. And when did you come for the first time for your
- 11 preparation for this trial?
- 12 A. That I'd have to look back. I'm not sure.
- 13 Q. Well, was it a month ago, two weeks ago?
- 14 A. For preparation for the trial, it would've probably been
- 15 maybe the end of April.
- 16 Q. And you stayed; you didn't commute back and forth to
- 17 Atlanta, Georgia, correct? Did you commute back and forth
- 18 while you were preparing for this trial?
- 19 A. Yes.
- 20 Q. And how long did you stay when you came sometime in April?
- 21 A. For a day.
- 22 Q. And then you would go back?
- 23 A. Yes.
- 24 Q. And then you would come back again?
- 25 A. Yes.

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RILEY - CROSS

1 Q. For another day?

2 A. Yes.

3 Q. About how many trips, day trips did you make, ma'am?

4 A. I think maybe three.

5 Q. And did you have telephone contact with either the agent  
6 that you pointed -- the agents you pointed out or anybody in  
7 the U.S. Attorney's Office?

8 THE COURT: When?

9 Q. Between April when you started coming here?

10 A. Yes.

11 Q. And how often would you have contact?

12 A. Well, Kirk and Rachel work in the same office I do.

13 Q. Okay. So you would see them in Atlanta?

14 A. If we all happened to be in that day.

15 Q. Well, did you have an interview with them, with Kirk and  
16 Rachel on April 22nd, 2008?

17 A. I could have. I'm --

18 Q. Well, would meet with you in Atlanta, Georgia or would they  
19 meet with you here in New York?

20 A. For trial prep?

21 Q. For trial prep.

22 A. It would -- it --

23 THE COURT: What was your answer?

24 A. For -- how do we define trial prep? I mean, I can meet at  
25 either -- I mean for trial prep, I would come up and meet with

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1 Steve.

2 Q. Mr. Kwok, the Assistant U.S. Attorney, correct?

3 A. Yes.

4 Q. When you met with Rachel did you --

5 MR. RUBINSTEIN: Let me just approach the Government  
6 for a moment, your Honor.

7 Q. When did you meet Mr. Kwok for the first time?

8 A. I'm not sure.

9 Q. Was it prior to 2008?

10 A. Prior to 2000 -- I'm not sure when I met him.

11 Q. Now, you, as member of the Office of the Inspector General,  
12 you're in the civil portion of that office, correct?

13 A. I'm in the audit portion of that office.

14 Q. And is that civil or criminal end?

15 A. Neither. It's -- I do -- I normally do audits.

16 Q. And the two agents here are?

17 A. Investigators.

18 Q. Investigators. In the criminal division?

19 A. Yes -- well, whatever, civil or criminal.

20 THE COURT: Is there a criminal division and civil  
21 division?

22 THE WITNESS: No, no. There's only -- there's -- they  
23 handle -- I think -- I understand they handle both.

24 Q. You understand they're called special agents, correct?

25 A. Yes.

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RILEY - CROSS

1 Q. So you understand that they have the power to arrest  
2 people, correct?

3 A. Yes.

4 Q. Now, I asked you yesterday on the voir dire if you had any  
5 documents that you used in preparing your report in July of  
6 2003, the first report that you prepared here?

7 A. Yes.

8 Q. And did you have any documents?

9 A. Yes.

10 Q. Did you review those documents between yesterday and today?

11 A. Yes.

12 Q. Do you have them with you?

13 A. Um, I -- my computer. I don't have a printed copy of them.

14 Q. Well, did you print a copy out in 2003, in June or July of,  
15 or August of 2003, while you were preparing your first audit?

16 A. I had printed copies of the documents. Yes, I got printed  
17 copies of the documents somewhere.

18 THE COURT: On the computer, the computer documents;  
19 is that what you're saying? Or are you talking about the  
20 documents you -- any documents you inspected at the offices of  
21 CASI?

22 THE WITNESS: I've got either -- some of the documents  
23 I have are computer documents and some of the documents I have  
24 have been printed.

25 THE COURT: By?

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RILEY - CROSS

1 THE WITNESS: By -- I don't know if it was by me or by  
2 CASI, I mean because it was 2003.

3 THE COURT: Were they printed by computer -- out of  
4 the computer?

5 THE WITNESS: They were printed, and I had computer  
6 records that were provided by CASI, copies of some computer  
7 records and some of them were printed and some of them were  
8 not.

9 THE COURT: So some of them were printed off CASI's  
10 computer?

11 THE WITNESS: Possibly some.

12 THE COURT: Some were printed off your computer?

13 THE WITNESS: Possibly, yes.

14 THE COURT: Well, not possibly.

15 THE WITNESS: Yes.

16 THE COURT: Yes or no?

17 THE WITNESS: Yes, yes. It could be at the -- it  
18 could be either one. I mean --

19 THE COURT: I'm --not possibly. Yes or no.

20 THE WITNESS: Off the top of my head, I don't remember  
21 which documents were printed and given to me or which documents  
22 I got back to Atlanta.

23 THE COURT: They were either printed --

24 THE WITNESS: Yes.

25 THE COURT: -- off the CASI's computer --

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1 THE WITNESS: Yes.

2 THE COURT: Or off yours?

3 THE WITNESS: Or me.

4 THE COURT: All right.

5 MR. KWOK: Could we have a sidebar, your Honor?

6 THE COURT: No, you can not.

7 BY MR. RUBINSTEIN:

8 Q. Now, so you did have what's called the hard copies of items

9 that were on the computer, correct?

10 A. Some of --

11 THE COURT: She's answered that.

12 A. Yes.

13 Q. And where are those hard copies that you obtained in the

14 summer of 2003?

15 A. They're in the audit file.

16 Q. And where is the audit file?

17 A. Here.

18 Q. All right. And have you turned that over to the

19 Prosecutor?

20 A. The audit file?

21 Q. Right.

22 A. I provided copies of the documents that we had from CASI to

23 him.

24 Q. And it's fair to say you did not have a general ledger,

25 correct?

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RILEY - CROSS

1 A. I had whatever documents that CASI -- I guess it depends  
2 how you're defining general ledger there. The thing that  
3 that --

4 Q. You're saying --

5 THE COURT: Letter her finish her answer.

6 A. The number, the numbers that -- the number that you're  
7 referring to came from the books and records provided to me by  
8 CASI's representative Frank Spring, Joan Hayes, Bob Benedict.  
9 Dr. Karron was aware of the documents that they provided, and  
10 there's, there's summaries by budget category of expenses.  
11 Those numbers were taken from, from the -- I guess it would be  
12 the like the profit loss statement.

13 Q. The summaries?

14 A. Summaries.

15 Q. Right?

16 A. Well, it's -- there's also -- because we used different  
17 records for 2003, they may not have been printed. They may  
18 still be on a disk somewhere.

19 Q. You're a CPA, are you not, ma'am?

20 A. Yes.

21 Q. And you know what a general ledger is, do you not?

22 A. Yes.

23 Q. And tell the jury what a general ledger is?

24 A. A general ledger is the ledger of accounts and how the  
25 costs are categorized by the accounting system.

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1 Q. Does a general ledger reflect every transaction made by the  
2 organization?

3 A. Yes, it should.

4 Q. It should?

5 THE COURT: Should.

6 Q. And if there are changes made or adjustments, sometimes  
7 there are adjustments because --

8 A. Yes, there are adjustments.

9 Q. -- something is missed or some income is missed, correct?

10 A. Yes.

11 Q. Where would those adjustments be reflected?

12 A. They would be reflected in the general ledger, but they  
13 should also be carried forward to the profit and loss  
14 statements.

15 Q. Now, you never saw a general ledger here, correct? What  
16 you just described, did you ever see that at any time from June  
17 of 2003, to today?

18 A. I've gotten the, whatever the Quick Book records that they  
19 provided to me.

20 Q. You know that their records that they provided to you were  
21 summaries; you just testified to that, correct?

22 THE COURT: Objection.

23 THE WITNESS: But it's some of the --

24 THE COURT: One question you're asking. That's a  
25 double question. Ask your single question, Mr. Rubinstein, so

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1 it's clear what she's being asked and what she's answering to.

2 Q. Is it a fact that what you were supplied were summary

3 charts?

4 A. I was provided summaries, but I also saw the support for

5 the summaries.

6 Q. You made copies of those support for the summary?

7 A. I don't know the -- I don't remember. I think that there

8 should be somewhere, but I don't remember specifically.

9 Q. Do you recall -- you met with a man named Mark Spitz,

10 correct -- Mel Spitz?

11 A. Mel Spitz, yes.

12 Q. And he was introduced to you as the new auditor for CASI

13 LLC?

14 A. Yes.

15 Q. Correct? And you met him sometime in December of 2003,

16 right?

17 A. Yes.

18 THE COURT: I thought we're talking about June, July

19 2003, Mr --

20 MR. RUBINSTEIN: We were.

21 THE COURT: So now we're moving to December. Okay. I

22 just want --

23 MR. RUBINSTEIN: Two years later.

24 THE COURT: All right, okay. So she's oriented all

25 right.

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RILEY - CROSS

1 MR. RUBINSTEIN: Well get her back to July, Judge.

2 We'll get her back to Atlanta too.

3 THE COURT: I hope we're finished with July.

4 Q. Did Mr. Spitz provide you with two computer disks?

5 A. He provided me with new books and records.

6 Q. Did he provide you with --

7 A. I don't remember if there were two disks or not.

8 Q. Well, did you look at what he had provided you with?

9 A. Yes, I did.

10 Q. Did they -- did what Mr. Spitz provided you with contain a  
11 general ledger?

12 A. He provided expenses by budget category as -- I don't -- I  
13 don't remember if it was necessarily --

14 THE COURT: Was it in the form of a proposed general  
15 ledger or a general ledger of any sort, or is it just proposed,  
16 a summary of --

17 THE WITNESS: Yes.

18 THE COURT: -- the total expense; which was it?

19 THE WITNESS: Yes, he provided -- he provided us a  
20 general ledger and he provided summaries of expenses.

21 Q. And did you utilize his documents, in any way, in creating  
22 the financial records that you relied upon?

23 A. Yes.

24 Q. And we have before us in evidence Exhibit 110 and 111. Are  
25 you -- do you recall what those are, ma'am?

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RILEY - CROSS

1 A. 110, okay. Yes.

2 Q. And when did you create those exhibits 110 and 111 that's  
3 in the books that we all have, the jurors and what have you?

4 A. In 2004 or -- yeah 2004, 2005.

5 Q. Isn't it a fact, ma'am, that you created them in  
6 preparation for this trial?

7 A. I created them at the request from the request of  
8 investigations.

9 Q. Pardon?

10 A. I created them at the request of investigations.

11 THE COURT: Who investigation?

12 THE WITNESS: From Rachel or Kirk provided me with the  
13 records I had subpoenaed.

14 THE COURT: I'm sorry?

15 THE WITNESS: From the, from our investigators they  
16 had subpoenaed the checks, corroborated this from the banks,  
17 the subpoenaed checks.

18 Q. And, in fact, you did that in May of 2008, about a week or  
19 two before -- a week before the trial started, right?

20 A. No. These were created -- this, the data base was created  
21 prior to that. I was still -- did some analysis on the account  
22 because it had been created.

23 THE COURT: When was this record originally created  
24 that you're talking about here in the computer, 2004, 2003,  
25 2005?

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1 THE WITNESS: It was created -- it was created in  
2 two -- I'm not -- because -- I've got a couple data bases. It  
3 was created sometime in 2004, 2005. I would have to look back  
4 and see the exact -- look at my time, look to see the exact  
5 time it was created.

6 THE COURT: That's satisfactory. Now go ahead.

7 Q. Now, did you examine the CASI, prior to them receiving you  
8 or any member, to your knowledge, of the Office of The  
9 Inspector General --

10 MR. KWOK: Objection.

11 Q. -- examine CASI prior to them receiving the actual grant on  
12 October 1st --

13 MR. KWOK: Objection.

14 Q. -- 2001?

15 THE COURT: Objection to the form of the question is  
16 sustained. You're not asking for her knowledge, so --

17 MR. RUBINSTEIN: Okay.

18 THE COURT: Please.

19 Q. Is it a -- does the --

20 MR. RUBINSTEIN: Well, she is an expert, your Honor.  
21 She was qualified as an expert.

22 THE COURT: Not an expert on that, not on when other  
23 people might have done things.

24 Q. Did you examine, on behalf of NIST, CASI prior to the  
25 granting, prior to them receiving the grant?

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1 THE COURT: Before they received the grant, did you  
2 examine -- have anything to do with CASI?

3 THE WITNESS: No, no.

4 THE COURT: Okay.

5 Q. It's a fact that under -- you're governed by Title 15, CFR  
6 14, correct?

7 A. For the grant, yes.

8 Q. Yes?

9 A. Yes.

10 Q. And as part of your responsibility of the Office of the  
11 Attorney General, the principal officer of the recipient of the  
12 grant is evaluated for financial responsibility, correct?

13 MR. KWOK: Objection.

14 THE COURT: By the Attorney General?

15 Q. No, by the Office of the Inspector General.

16 THE COURT: Do you know?

17 THE WITNESS: They submit -- yeah. They --

18 THE COURT: Do you know?

19 THE WITNESS: That doesn't come to me. That goes to  
20 another section of the organization.

21 Q. Isn't it a fact that the key officials are examined as to  
22 their financial responsibility?

23 THE COURT: Do you know that?

24 THE WITNESS: They're --

25 THE COURT: Do you have any knowledge of that?

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1 THE WITNESS: They do a background check before they  
2 give the awards I think, yeah.

3 THE COURT: You think?

4 THE WITNESS: Yeah, they have a section for NIST  
5 grants file, they have background information, financial stuff.

6 THE COURT: You're not involved in that?

7 THE WITNESS: I'm not involved in that.

8 THE COURT: All right.

9 Q. But you're familiar with the fact that under that section,  
10 the question of whether or not OIG reviews the applicant as to  
11 their responsibility and as to their honesty and their  
12 financial stability --

13 MR. KWOK: Objection.

14 Q. -- is the officials, correct?

15 MR. KWOK: Objection.

16 THE COURT: Do you have any knowledge -- objection --  
17 I think this is not the right witness for this, Mr. Rubinstein.

18 MR. RUBINSTEIN: Judge, they want Dr. Karron to know  
19 every line in this statute.

20 THE COURT: I don't want to have an argument in front  
21 of the jury of this sort. If you want to raise it, you can  
22 raise it at the side bar, but you can probably get a  
23 stipulation.

24 Q. Are you familiar with Chapter Eight of 15 CFR, 14?

25 A. What is it talking about?

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1 THE COURT: If you want to put the -- if you want to  
2 put something from the Code of Federal Regulations in, you can  
3 put it into evidence. Let's not waste our time with this  
4 witness on this subject.

5 MR. RUBINSTEIN: I'd like to mark it then for  
6 identification at this time as defendant's AAA.

7 THE COURT: Show it to the government and --

8 MR. RUBINSTEIN: Yes.

9 THE COURT: Give it to the Clerk and I'll have it  
10 marked.

11 MR. RUBINSTEIN: I marked it, Judge.

12 THE COURT: What?

13 MR. RUBINSTEIN: I marked it.

14 THE COURT: They Code of Federal Regulations,  
15 paragraph eight, 14, is that correct?

16 MR. RUBINSTEIN: Your Honor, it's chapter eight.

17 THE COURT: What have you marked it as?

18 MR. RUBINSTEIN: AAA.

19 THE COURT: Defendant's AAA?

20 MR. RUBINSTEIN: Yes. It's chapter eight, referring  
21 to page five, your Honor.

22 THE COURT: Just chapter eight, page five?

23 MR. RUBINSTEIN: And chapter nine.

24 THE COURT: Not paragraph 14.

25 MR. RUBINSTEIN: Chapter nine, page seven.

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1 THE COURT: I'm sorry, I didn't hear that.

2 MR. RUBINSTEIN: Chapter nine, page seven.

3 THE COURT: Eight code of Federal regulations, chapter  
4 nine, page seven; is that correct?

5 MR. RUBINSTEIN: Your Honor --

6 THE COURT: We could do this outside the presence of  
7 the jury.

8 MR. RUBINSTEIN: Yes, your Honor.

9 BY MR. RUBINSTEIN:

10 Q. As part of your responsibility as a member of the Office of  
11 the Inspector General, you're provided with all of these 15 CFR  
12 sections, correct?

13 MR. KWOK: Objection.

14 THE COURT: Objection sustained. Now let's get ahead  
15 with this. It doesn't bear on this witness' testimony. Come  
16 on.

17 MR. RUBINSTEIN: Judge, they put on the board --

18 MR. KWOK: Objection.

19 MR. RUBINSTEIN: -- 15 CFR.

20 THE COURT: You could put up on the board CFR too.  
21 All you got to do is move it into evidence.

22 MR. RUBINSTEIN: It's in evidence, Judge. Could you  
23 put Exhibit 4 --

24 THE COURT: What is in evidence?

25 MR. RUBINSTEIN: Exhibit 4, Government's exhibit 4.

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1 THE COURT: All right. If it's already in evidence,  
2 then why are we marking this other thing for?

3 MR. RUBINSTEIN: Because it's only referenced in  
4 Exhibit 4. This it page 11, your Honor.

5 THE COURT: All right.

6 MR. RUBINSTEIN: 7 or 11, let me see.

7 THE COURT: Do you want to have it marked in evidence,  
8 offer it in evidence.

9 MR. RUBINSTEIN: Pardon, Judge?

10 THE COURT: Look, we're interrupting the  
11 cross-examination here. Let's get this thing moving. We've  
12 had a half-hour of examination and we haven't yet gotten to  
13 anything about this witness' testimony. Let's get on.

14 BY MR. RUBINSTEIN:

15 Q. When were you first contacted about the audit of the --  
16 review what was allowable for CASI Corporation, CASI, Inc.?

17 A. End of April -- approximately May of 2003.

18 Q. And who notified you?

19 A. Our office got a request from NIST grants office to do an  
20 audit, to review the financial status of CASI.

21 Q. And did you -- and did you speak to a person from NIST,  
22 personally?

23 A. I spoke to Hope and to B.J., Hope Snowden, and who is the  
24 grants officer, and B. J. Lide, who was the program officer.

25 Q. And did --

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1 THE WITNESS: I think Jane Orthwein, who is also a  
2 program officer.

3 THE COURT: I'm sorry?

4 THE WITNESS: And to Jane Orthwein, who is also a  
5 program officer.

6 THE COURT: Who? What's the other name?

7 THE WITNESS: B. J. Lide and Jane Orthwein, I think  
8 it's O-r-t-h-w-e-i-n.

9 THE COURT: And is there a third person?

10 THE WITNESS: I could've talked to one of Hope's  
11 supervisors, which --

12 THE COURT: All right.

13 THE WITNESS: Marilyn.

14 Q. Did you have a meeting with these people in person or over  
15 the telephone or what?

16 A. I had a meeting with them in person.

17 Q. All three of them?

18 A. Yes.

19 Q. And did you subsequently -- who is William F. Bedwell?

20 A. He was the regional Inspector General for Atlanta at the  
21 time.

22 Q. And did he assign you to investigate the expenses of CASI?

23 A. He would've provided the audit assignment when the audit  
24 started in May of 2003.

25 Q. And when did the audit actually start?

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1 A. Well, when I got there when, when our office decided to  
2 perform the audit, I called to request a meeting with Dr.  
3 Karron, with CASI representatives, and they were redoing the  
4 books.

5 THE COURT: What's the date? All we need is the date  
6 when, that's all, that's all he asked.

7 THE WITNESS: I don't know -- okay. I don't -- in May  
8 of 2003. I don't know the specific date.

9 Q. Did you have that -- is that called an entrance conference?

10 A. We had the entrance conference on June 18th when I arrived  
11 in New York.

12 Q. And who did you meet with?

13 A. Dr. Karron and Bob Hayes and Joan Benedict, and I don't  
14 remember Frank Spring was there or not.

15 Q. And that was at -- you met with them at the headquarters of  
16 CASI?

17 A. Yes.

18 Q. Correct? And CASI -- what organization had received the  
19 grant from NIST, the ATP grant from NIST?

20 A. I think it was Computer Aided Surgery, Incorporated.

21 Q. And you ascertained that Dr. Karron was the principal  
22 officer of that corporation?

23 A. Yes.

24 Q. Were you aware, when you began the audit, what the official  
25 name of CASI was?

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- 1 A. It was at one time CASI, Computer Aided Surgery Informatics  
2 Corporation, and so they preferred to be called CASI. So  
3 that's normally the name that I used for them.
- 4 Q. Were they incorporated; was it then as CASI, Inc?
- 5 A. Oh, I think it could have been, yes. Maybe.
- 6 Q. Well, are you aware whether or not at any time they changed  
7 their name from CASI, Inc. to CASI LLC?
- 8 A. Yes, they had changed their name to CASI LLC.
- 9 Q. Now, when you went to the location at 300 East 33rd Street,  
10 apartment, it was apartment 1N, correct?
- 11 A. I think that's the address.
- 12 Q. And you had made an appointment before you got there?
- 13 A. Yes.
- 14 Q. And when you arrived -- approximately, what time did you  
15 get there?
- 16 A. I don't remember if that was a morning or evening. I had  
17 come over from -- I had taken the train from D.C, and I don't  
18 remember if I went -- if it was in the morning appointment or  
19 evening appointment or afternoon appointment.
- 20 Q. And for sure Joan Hayes was there, correct?
- 21 A. Yes, I think Joan Hayes was there.
- 22 Q. Bob Benedict was there?
- 23 A. Yes.
- 24 Q. And Dr. Karron was there?
- 25 A. Yes.

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1 Q. Now, were there other people present when you arrived  
2 there?

3 A. Yes. I think probably Jim Cox was there, and maybe Mat  
4 Rothman.

5 Q. And they were identified to you as employees of CASI?

6 A. Yes.

7 Q. They were -- you were informed they were working on the ATP  
8 project?

9 A. Yes.

10 Q. And when did you -- had you talked to Joan Hayes prior to  
11 your visit on June 18, 2001?

12 A. I don't remember specifically if I talked to her. I could  
13 have and, in scheduling the appointment, because they were  
14 trying to redo the books, and so we had rescheduled. So I'm  
15 not sure who I -- if I spoke directly with Dr. Karron for that  
16 or if I talked to one of his representatives.

17 Q. And how long did this visit take, this first visit?

18 A. It started I think probably on Wednesday of one week and  
19 through Thursday or Friday the next week.

20 Q. Now this -- what room did you meet these three people in,  
21 Dr. Karron, Bob Benedict --

22 A. At CASI's, at the CASI, Dr. Karron's apartment, CASI  
23 office, that, the first meeting?

24 Q. Yes.

25 A. Okay. The first meeting was there at the business.

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1 Q. At the business. And it was in the business section of the  
2 apartment?

3 A. It was in the living room, I guess the living room of the  
4 apartment, the business.

5 Q. You say living room. Was there, were there couches in  
6 there?

7 A. No, there were computers in there.

8 Q. Were there furniture that you would expect to find in what  
9 would commonly be called a living room?

10 A. No.

11 Q. And, approximately, how many computers were there?

12 A. I think there were four.

13 Q. And how large were they?

14 A. They were, they were large. I mean, they -- I know a  
15 couple of them had two monitors. I don't remember if all four  
16 of them had two monitors.

17 Q. And were there work areas for people to work at that had  
18 smaller computers?

19 A. There were -- there were -- I, I don't remember. There  
20 was, there were -- I don't remember the size of all the  
21 computers.

22 Q. But there was also a bedroom there, correct?

23 A. Yes.

24 Q. And --

25 MR. KWOK: Objection, relevance.

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1 THE COURT: I will allow the question. I'll allow the  
2 question. Is there a bedroom in the apartment?

3 THE WITNESS: Oh, I'm sorry. Yes.

4 Q. I'm going to show you what's being marked as defendant's  
5 BBB for identification?

6 THE COURT: 3 B's?

7 MR. RUBINSTEIN: 3 B's, yes, your Honor.

8 Q. And ask you if you recognize what is depicted in that  
9 document?

10 MR. KWOK: Your Honor, may we approach to look at it?

11 THE COURT: There are four -- it's more than one  
12 picture.

13 MR. RUBINSTEIN: Yes, your Honor.

14 THE COURT: Six pictures.

15 THE WITNESS: Yeah, it's -- it's the CASI office  
16 apartments.

17 Q. Thank you.

18 THE COURT: All of it, the entire apartment?

19 THE WITNESS: It's the section that was known as the  
20 living room of the apartment, would have been the living room  
21 section of the apartment.

22 THE COURT: Pictures of the part of the living room?

23 THE WITNESS: Yeah, it's the -- it's a small living  
24 room. It has computer desks around it.

25 THE COURT: Let's get on with this, Mr. Rubinstein,

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1     instead of --

2                 MR. RUBINSTEIN:   Yes, Judge.

3                 THE COURT:   Let's move it on.   We've got to get to the  
4     testimony and what she's testified about, now let's move it  
5     along.

6                 MR. RUBINSTEIN:   We offer this in evidence.

7                 THE COURT:   We've been here almost 45 minutes on this  
8     cross-examination.

9                 MR. RUBINSTEIN:   The government told me they were  
10    going to be 45 minutes long.

11                THE COURT:   Let's move it along.

12                MR. RUBINSTEIN:   I want to offer BBB in evidence.

13                MR. KWOK:   No objection.

14                THE COURT:   No objection?   BBB is received in  
15    evidence.

16                (Defendant's Exhibit BBB received in evidence)

17                MR. RUBINSTEIN:   Put this on the Elmo, please.

18                THE COURT:   I guess you have to -- you have to move it  
19    sideways too for the jury to get any idea.   That's upside down.  
20    Q.   Now, you see the screen in the bottom as you face the  
21    picture on the bottom right portion; you see what's depicted  
22    there?

23    A.   Yes.

24    Q.   Pardon?

25    A.   The screen, yes.

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1 Q. And did you see that screen in the apartment?

2 A. I don't recall if I saw the screen or not. They did a  
3 presentation, but I was thinking it was on the monitor,  
4 computer monitors, but I don't recall if I saw.

5 Q. And did you see in the, in 120A they presented an exhibit  
6 that sort of looked like this item over here, a lamp with a  
7 projection; did you see that?

8 A. At the apartment?

9 Q. At the apartment.

10 A. I don't recall if I saw that at the apartment.

11 THE COURT: Well, when you identified this as Dr.  
12 Karron's apartment, does it look like the apartment at the time  
13 that you viewed it in July 2003; is that a fair representation  
14 of the apartment and equipment in it at the time in July 2003?

15 THE WITNESS: It, it had a -- it had -- I don't  
16 remember the -- if I saw the screen, but the other stuff is  
17 probably so.

18 THE COURT: What?

19 THE WITNESS: The other, the rest of it probably.

20 THE COURT: Not probably.

21 THE WITNESS: Oh, yeah.

22 THE COURT: You know when this picture was taken?

23 THE WITNESS: No.

24 THE COURT: All right. Well, does it --

25 THE WITNESS: Yes.

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1 THE COURT: Therefore, that's why I'm asking you the  
2 question.

3 THE WITNESS: Yes. It looks -- yeah, but I was --

4 THE COURT: Not the apartment itself, the equipment in  
5 it.

6 THE WITNESS: Um, yes, they had similar -- they would  
7 have had -- except for the -- I don't know about the -- I don't  
8 remember about the screen -- but it had -- did have computers  
9 like that and things under the deck and all the things.

10 THE COURT: All right.

11 (Continued on next page)

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8657KAR4

Riley - cross

1 BY MR. RUBINSTEIN:

2 Q. And there was shelving around the room?

3 A. There was shelving.

4 Q. And it wasn't for knickknacks, right? It was for  
5 computer-related items, correct?

6 THE COURT: That calls for a conclusion. Let's go  
7 ahead.

8 Q. Well, you as the auditor, were you interested in  
9 determining whether or not government money was spent on  
10 computer-related items?

11 A. They had a budget for equipment.

12 Q. Now, were you at the apartment when the -- the prosecutor  
13 read to you a whole list of items that were seized. Were you  
14 present when the items were seized?

15 A. No.

16 Q. At that meeting in June of 2001 with Joan Hayes and Bob  
17 Benedict, who did you understand Bob Benedict was?

18 A. June of --

19 Q. June of 2003 when you were conducting your audit.

20 A. He was the project manager.

21 Q. And while you were in the -- while you were at CASI, were  
22 you provided with any documentation?

23 MR. KWOK: Time frame, your Honor.

24 A. Documentation for what?

25 MR. KWOK: Time frame.

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8657KAR4 Riley - cross

1 THE COURT: Time frame.

2 MR. RUBINSTEIN: When she was at the apartment.

3 THE COURT: Which are you talking about? July?

4 MR. RUBINSTEIN: I said June, Judge.

5 THE COURT: All right. In June.

6 MR. RUBINSTEIN: First I said 2001 and then I said  
7 2003.

8 THE COURT: I don't want to hear that. I want to hear  
9 her give some testimony that's accurate and straight.

10 THE WITNESS: He said documents.

11 Q. Any financial statements?

12 A. I was given whatever the Quick Book records were that they  
13 provided to me.

14 Q. Who is they?

15 A. Probably Joan Hayes, Bob Benedict, Frank Spring, Dr.  
16 Karron. I don't know who specifically handed me the  
17 information.

18 Q. Was the information ready for you, or did they have to  
19 print it out from one of the computers?

20 A. They were still in the process of redoing the second set of  
21 books.

22 THE COURT: Did they hand it out to you or not?

23 THE WITNESS: They gave me some of it in computer and  
24 some of it in hard copy.

25 Q. And were you shown the system that was used by the

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Riley - cross

1 principal -- by the people at CASI to keep their records?

2 A. Yes.

3 Q. And in fact every check was scanned into this system,  
4 correct?

5 A. Yes, they scanned in checks and invoices.

6 Q. And the checks, invoices and backup, correct?

7 A. Yeah, the invoices would be the backup. They scanned into  
8 the computer and destroyed the original invoice.

9 Q. And in your audit of reviewing whenever a check was issued  
10 and cashed was there an invoice that backed up that particular  
11 item?

12 A. I don't remember specifically what it looked like, what  
13 that record looked like.

14 Q. I'm not asking you what the record looked like, ma'am.

15 A. You're asking me if there was a check backing up the  
16 invoice attached to each invoice.

17 Q. Right.

18 A. I don't remember specifically in the instance of CASI if  
19 they had copies of checks and copies of invoices attached to  
20 each other. It's possible, but I don't specifically recollect  
21 if they did or not.

22 Q. Well, if they had an expense that they wrote a check for  
23 and there was no invoice as a backup, would you make a note of  
24 that as an auditor?

25 A. Yes.

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Riley - cross

1 Q. And in fact in this case you made no notes of missing  
2 invoices to match with checks, correct?

3 A. Right, I don't think so, right.

4 Q. Now --

5 A. For the sample reviewed.

6 Q. That was the first review, the sample review, correct?

7 A. Both of them -- yes, they would have sample review.

8 Q. Did you ask questions of Dr. Karron?

9 A. Yes.

10 Q. And did you ask him for specific information?

11 A. Yes.

12 Q. And give us an illustration of something you asked Dr.  
13 Karron for.

14 THE COURT: If you remember.

15 A. Well, I know I asked him what the employees did. That kind  
16 of information? I mean --

17 Q. Did he respond to you?

18 A. Yes.

19 Q. Did he respond to any question you asked him?

20 A. I think so.

21 Q. Did he offer to let you use the -- excuse me one second --  
22 and did they actually show you on a computer screen documents  
23 that had been stored in the computer --

24 A. Yes, yes.

25 Q. -- to show the expenses that were incurred and the backup

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Riley - cross

1 why it was legitimate? Right?

2 A. They showed, documents --

3 MR. KWOK: Objection to form.

4 Q. Well, backup to explain what the expense was for.

5 THE COURT: Overruled. Could I hear the question

6 back.

7 (Record read)

8 THE COURT: It doesn't sound like a complete answer.

9 THE WITNESS: There was an objection, so I didn't know  
10 if you --

11 A. They showed documents. They showed copies of invoices that  
12 they had scanned into the computer.

13 Q. Now, you used as a starting point -- did you use as a  
14 starting point for your audit what was the schedules of the  
15 most recently approved budget?

16 A. Yes.

17 THE COURT: What you were told was the most recently  
18 approved budget.

19 THE WITNESS: Yes, what I was told was the most  
20 recently approved budget. I think it was amendment 2.

21 Q. And in fact when you were in the apartment -- withdrawn.

22 You became aware during the course of your audit that  
23 there were certain expenses attributable to work that had been  
24 done in the apartment, shelving and installation of wiring and  
25 things of that nature, correct?

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Riley - cross

1 A. Yes. Yes.

2 Q. Did you see when you were in that apartment anything that  
3 you would describe as construction?

4 A. The shelves and the desks, the tables.

5 THE COURT: Were they under construction?

6 THE WITNESS: No, they weren't under construction at  
7 the time.

8 Q. The shelves and the desks. And is it fair to say that you  
9 disallowed that expense?

10 A. Yes.

11 Q. And are you familiar with -- and on what basis did you  
12 disallow that expense?

13 A. It wasn't allowable per the budget.

14 Q. Equipment was allowable, was it not?

15 A. I didn't question the equipment amount up to the budget  
16 category.

17 Q. Well, are you aware that under the category of equipment  
18 you are permitted to do a certain amount of what you would call  
19 site preparation?

20 A. They still had more cost -- the equipment was still over  
21 the budget without that cost, so saying whether that was  
22 allowable or not allowable was irrelevant as to whether it  
23 would be qualified as allowable equipment costs.

24 Q. The money was spent -- in other words, are you saying now  
25 that whatever changes were made, physical changes were made to

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Riley - cross

1 the apartment, were made for the benefit of the program for  
2 carrying out the project?

3 MR. KWOK: Objection.

4 THE COURT: I didn't hear her say that.

5 Q. Well, are you familiar with the fact that under equipment  
6 you are permitted -- "ATP funds may, however, be used for  
7 construction of experimental research and development  
8 facilities to be located within a new or existing building,  
9 provided the equipment or facilities are essential for carrying  
10 out the project. If such costs are proposed, include below and  
11 provide justification." Are you familiar with that?

12 A. Yes.

13 Q. And salaries, you reviewed the salaries, did you not?

14 A. Yes.

15 Q. And what was your -- you disallowed salaries, did you not,  
16 as part of you coming to this half a million dollar figure,  
17 right?

18 A. Which figure are we talking about now?

19 Q. Salaries.

20 A. Are we talking about the July report or the December  
21 report?

22 Q. In your testimony did you say that you disallowed --

23 THE COURT: No, you've got to give her some time  
24 frame, Mr. Rubinstein.

25 Q. Well, how about did there come a time that you in your

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8657KAR4

Riley - cross

1 evaluation and analysis of CASI, that you evaluated the  
2 salaries that were being paid?

3 A. Yes.

4 Q. And when was that?

5 A. In the December 2003 review.

6 Q. And at that time did you make a determination as to how  
7 much salary was approvable?

8 A. Yes.

9 Q. How much salary was budgeted for CASI for the first year,  
10 October 1, 2001 to September 30, 2002, the first year of the  
11 grant?

12 A. I would have to look back at some documentation to know the  
13 specific number.

14 Q. Pardon? Do you have anything that --

15 A. Dr. Karron's salary was budgeted 175,000, and the other  
16 employees' salaries were budgeted at 150,000.

17 Q. And how much of Dr. Karron's \$175,000 salary did you allow?

18 A. I think 85 percent of it. Is that right?

19 THE COURT: You look at the papers and tell us. Don't  
20 say you think.

21 MR. KWOK: Your Honor, I don't know whether  
22 Mr. Rubinstein is asking per the audit or per the bank records  
23 analysis.

24 MR. RUBINSTEIN: I'm asking her audit, what she  
25 allowed.

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8657KAR4

Riley - cross

1 THE COURT: Which audit?

2 MR. RUBINSTEIN: In any audit.

3 THE COURT: 2004? July 2003? Which audit? The final  
4 audit? The one that went up on the board?

5 Q. Well, did your numbers change between your first audit and  
6 your second audit?

7 A. The first -- the numbers -- the number on the first audit  
8 didn't get that detailed. The short report number of the  
9 205,000 number came from the revised books, how much that CASI  
10 said it spent for the NIST project, excluding the expenses that  
11 it had for CASI, the difference between that and the deposits.  
12 So, that number didn't come from an analysis of the specific  
13 budget cost categories. The December report, after I met with  
14 Mel Spitz, was an analysis of the specific budget categories,  
15 since Dr. Karron told me he had additional new records.

16 Q. Do you want to look at the appendix to your draft report  
17 that's in evidence, which is Exhibit --

18 A. Right. And that one says --

19 THE COURT: Wait. Wait until he gives you the  
20 exhibit.

21 THE WITNESS: I'm sorry.

22 Q. 61. I'm sorry. 62. Appendix 1, page 2 of 8. Does that  
23 refresh your recollection of how much of Dr. Karron's approved  
24 salary you disallowed to come to your figure of over \$500,000?

25 A. I think 15 percent.

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8657KAR4

Riley - cross

- 1 Q. Pardon?
- 2 A. 15 percent. The chief technical officer, right?
- 3 Q. And that was based on an hourly computation?
- 4 A. That was based on an estimate of time spent on other
- 5 activities other than the NIST grant.
- 6 Q. What activities was that?
- 7 A. The business of CASI.
- 8 Q. Is it a fact that CASI had no other business?
- 9 A. CASI was a business though.
- 10 Q. But their only project was the ATP project?
- 11 A. Right, but there would still be expenses associated with
- 12 the existence of the business.
- 13 Q. When the budget was approved, it was approved for \$175,000,
- 14 correct, salary?
- 15 A. Correct.
- 16 Q. And was there any indication of how many hours Dr. Karron
- 17 would spend in order to earn his \$175,000 on this ATP project?
- 18 A. I don't remember if they specifically had time sheets or
- 19 not.
- 20 Q. Did you determine how many hours a week Dr. Karron worked
- 21 on the ATP grant?
- 22 A. The salary, the hours don't -- it doesn't necessarily
- 23 matter the hours. It's percent of time worked.
- 24 Q. Well, what about Mr. Gurfein, was he budgeted for salary?
- 25 A. Yes.

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8657KAR4

Riley - cross

1 Q. How much was he budgeted for salary?

2 A. I don't recall. I don't have a copy of the budget in front  
3 of me.

4 Q. So you overruled ATP that authorizes \$175,000 for Dr.  
5 Karron, correct?

6 MR. KWOK: Objection.

7 THE COURT: Objection sustained to the form of the  
8 question.

9 Q. In fact, does it refresh your recollection that Mr. Gurfein  
10 was to receive \$100,000 annual salary?

11 THE COURT: Does that refresh your recollection?

12 A. If I could see a copy.

13 Q. Why don't you look at the same page. See if it refreshes  
14 your recollection. He was the chief operating officer,  
15 correct?

16 A. Yes.

17 Q. Did that refresh your recollection of what Mr. Gurfein's  
18 salary was?

19 A. You said that it was \$100,000 according to the budget.

20 Q. And did you allow \$100,000 in costs for Mr. Gurfein?

21 A. Just because it's allowable in the budget category doesn't  
22 make it allowable --

23 THE COURT: The question is did you or didn't you.

24 THE WITNESS: I --

25 THE COURT: Yes or no?

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8657KAR4

Riley - cross

1 THE WITNESS: I don't have the information here to  
2 tell how much was allowable.

3 THE COURT: What does your report say right on the  
4 front page?

5 THE WITNESS: It says how much.

6 THE COURT: Page 2 of 8 on the appendix.

7 THE WITNESS: Right. It says how much is questioned;  
8 it doesn't say how much was allowed.

9 THE COURT: Well, when you say it's questioned, isn't  
10 that you disallow it subject to their coming back to you to  
11 show that it was appropriate?

12 THE WITNESS: Just because there is a budget category  
13 with an allowable amount, that means they allow up to that  
14 amount if applicable to the NIST project or part of the NIST  
15 project cost. It doesn't mean you are entitled to that amount  
16 of money no matter what.

17 Q. It doesn't mean you are not entitled to it either, correct?

18 A. If it's allowable in the NIST ATP grant cost it's allowable  
19 up to that amount. Just because you have an amount in a budget  
20 for an expense doesn't mean you are entitled to that amount if  
21 you didn't have allowable costs for that amount.

22 Q. If you have a budget for \$100,000 for equipment and you  
23 spend \$100,000 on equipment for your project, is that OK?

24 A. If it's a NIST ATP project equipment.

25 Q. Well, here there is only one project, correct?

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8657KAR4

Riley - cross

1 THE COURT: I'm sorry?

2 Q. In your audit did you find that CASI was doing any other  
3 project other than the NIST ATP project?

4 A. They were working on the NIST ATP project. They may --  
5 they also had been trying to get other awards.

6 Q. For this project.

7 THE COURT: Objection. Do you know what they were  
8 for, other awards?

9 THE WITNESS: Only the one that kept coming up from  
10 the State of New York that didn't happen.

11 Q. They wanted to get funds from the State of New York to add  
12 to this NIST ATP project, correct?

13 MR. KWOK: Objection.

14 THE COURT: Objection sustained.

15 Q. How much of Mr. Gurfein's \$100,000 salary did you disallow?

16 A. 25 percent.

17 Q. So, that would be \$25,000, correct?

18 A. Yes.

19 Q. If he got 100,000, it would be 25,000?

20 A. Yes.

21 Q. And on what basis did you reduce his salary by 25 percent?

22 A. Because of the duties that he did.

23 Q. He spent only 75 percent of his time on NIST ATP projects,  
24 is that your testimony?

25 A. Well, the things that Mr. Gurfein was doing were not

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8657KAR4

Riley - cross

1 necessarily things for the research, they were to continue the  
2 project. So, they weren't necessarily all allowable NIST  
3 project expenditures for grant purposes.

4 Q. Well, isn't it a fact that Mr. Gurfein's salary was  
5 approved on the basis that only 75 percent of his time would be  
6 devoted to the NIST project?

7 A. Right. And so when he carried it out then he wouldn't have  
8 had --

9 Q. Are you aware of that, ma'am?

10 THE COURT: Do you know what the situation was in  
11 terms of how his salary was computed --

12 THE WITNESS: I have to see the budget.

13 THE COURT: -- for the budget?

14 THE WITNESS: I know it was a percentage of whatever  
15 his salary was was allowable.

16 Q. I am asking you, ma'am, whether or not when you made the  
17 determination and you put in your report that \$25,000 -- this  
18 is reading from appendix A, page 2 of 8 pages, it says, \$25,000  
19 of the 71,550 is questioned for the chief operating officer due  
20 to 25 percent of his time and salary being allocated to  
21 non-NIST activities. Correct?

22 A. That's what it says, yes.

23 Q. So, that he is supposed to invest 75 percent of his time to  
24 a NIST activity, according to your calculation, right?

25 A. Yes.

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8657KAR4

Riley - cross

1 Q. But isn't it a fact that the budget specifically approved  
2 by NIST ATP provided that Gurfein was only to spend 75 percent  
3 of his time on the project?

4 A. So, it had 75 percent of his salary times that came up with  
5 a lower number than a hundred percent of his salary that was  
6 allowed for the budget.

7 THE COURT: What are you saying?

8 THE WITNESS: Well, if his -- I don't remember. But  
9 if his salary was \$100,000 a year, and NIST allowed 75 percent  
10 of that as NIST ATP for the budget, then 75 times a hundred  
11 would be \$75,000 of his salary could be reimbursed by the NIST  
12 project costs, and the other 25,000 would be paid by CASI.

13 THE COURT: Let me ask you a question. What did you  
14 understand the budget \$100,000 to be paying him? Did you  
15 expect it to be for 75 percent of his time?

16 THE WITNESS: 75 percent of the time, the salaried  
17 amount.

18 THE COURT: That's what it was in the budget.

19 THE WITNESS: That's what the budget would allow if he  
20 devoted that much time to the project, yes.

21 THE COURT: Now, so if he spent 75 percent of his time  
22 on the budget, why wasn't he entitled to the full amount of the  
23 \$100,000?

24 THE WITNESS: No, not working on the budget. But the  
25 NIST budget multiplies it out across that says \$100,000, times

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8657KAR4 Riley - cross

1 75 percent of his time, so that would be \$75,000 that NIST  
2 would reimburse of the salary that he was paid. I'm not sure  
3 if his salary was \$100,000. Whatever his salary was, times 75  
4 percent of the time, then NIST would pay that amount.

5 Is that how that's written? I don't --

6 THE COURT: Is that how what is written?

7 THE WITNESS: The budget.

8 THE COURT: So, you are just accepting what Mr. --

9 THE WITNESS: No, I'm saying how it's written.

10 THE COURT: Well, you are the one we're asking how  
11 it's written, not him.

12 THE WITNESS: OK, I need a copy of the budget to see.

13 THE COURT: Well, you better examine a copy of the  
14 budget before you start answering questions.

15 THE WITNESS: OK.

16 THE COURT: This isn't hypothetical stuff.

17 THE WITNESS: Right.

18 THE COURT: Do you understand?

19 THE WITNESS: Yes.

20 THE COURT: All right.

21 MR. RUBINSTEIN: Why don't we turn to Government  
22 Exhibit 10B.

23 THE COURT: Do you have a copy before you?

24 THE WITNESS: Yes.

25 THE COURT: All right.

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8657KAR4 Riley - cross

1 Q. Have you reviewed that, ma'am?

2 A. Yes. Where is the thing that -- this is -- where is the  
3 thing that incorporates this part of the award or of the  
4 budget? Because for amendment 2 what it should say is if his  
5 annual salary is \$100,000, then 75 percent of that would be  
6 \$225, not \$300,000, so this should be multiplying this across.  
7 I think these are prepared by I think CASI and submitted.

8 THE COURT: 10B?

9 THE WITNESS: Yes.

10 THE COURT: Is submitted by them?

11 THE WITNESS: Is submitted by CASI to NIST.

12 THE COURT: Where is what the award approved, the  
13 budget that the award approved? Do we have that exhibit?

14 MR. KWOK: It's Government Exhibit 22, I believe, your  
15 Honor.

16 THE COURT: What?

17 DEPUTY COURT CLERK: Government 22.

18 THE COURT: 22.

19 MR. RUBINSTEIN: Your Honor, I draw. If you look  
20 at --

21 THE COURT: She is looking at 22 now. Let's stay with  
22 what she is looking at and then you can ask a question.

23 THE WITNESS: There should be something that breaks  
24 down the expenses by years.

25 MR. RUBINSTEIN: Can I ask a question, your Honor?

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8657KAR4

Riley - cross

1 THE COURT: She hasn't answered the question yet.

2 THE WITNESS: There should be --

3 THE COURT: This is the budget that was approved.

4 THE WITNESS: There should be something that breaks

5 down for the year one that looks similar to this, that breaks

6 down by year one, year two, year three, instead of just all

7 three together, and it should --

8 THE COURT: I don't follow what you're saying. But

9 now you can see that they requested for the three years

10 \$1,330,000, looking at 10B --

11 THE WITNESS: Yes.

12 THE COURT: -- for personnel.

13 THE WITNESS: And then looking at page 2 of this

14 exhibit, the three year total is \$1,075,000.

15 THE COURT: So, there was some adjustment made.

16 THE WITNESS: Yes, there is some adjustment.

17 THE COURT: But you don't know what adjustment was

18 made.

19 THE WITNESS: Mathematically this should show -- the

20 annual salary is \$100,000. It should be three times a 100,000,

21 times 75 percent, and that wouldn't be \$300,000, so there is a

22 mathematical thing there.

23 Q. Are you aware that the \$325,000 allocation for salary and

24 wages was off an amended budget that initially had \$375,000

25 that was approved?

8657KAR4 Riley - cross

1 A. Yes.

2 THE COURT: You are?

3 THE WITNESS: Well, I know that this budget was  
4 adjusted, and they had moved some money to consulting to pay  
5 for George Wolberg.

6 THE COURT: What?

7 THE WITNESS: They moved some money from payroll cost  
8 to consulting costs or subcontracting cost to pay for Wolberg.

9 THE COURT: I'm trying to have you tell us what you  
10 were looking at --

11 THE WITNESS: Oh.

12 THE COURT: -- which allowed you to deduct or disallow  
13 Mr. Elisha Goldberg's salary in the amount of \$25,000. That's  
14 what I'm asking you to show us, what you were relying on to do  
15 that. Now, would you show it to us.

16 THE WITNESS: OK. The supporting document that shows  
17 the breakdown of costs by year, that looks similar to 10B, has  
18 similar personnel, fringe benefits, travel, it breaks down the  
19 cost as a year one, year two, year three, instead of a total  
20 cost. On this it says like Lee Gurfein, \$100,000 annual  
21 salary, percentage of time on project is estimated, the  
22 budgeted is estimated to be 75 percent, and so that should not  
23 be \$300,000, it should be it should be 225. Plus  
24 mathematically it's not right.

25 THE COURT: All right. Well, we have to take --

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8657KAR4 Riley - cross

1 THE WITNESS: But there is some other document.

2 THE COURT: You better study your documents, and we  
3 better take a luncheon break. It's ten after one, so the jury  
4 is excused until ten after two. And the parties are instructed  
5 they are not to talk to the witness during the break.

6 (Luncheon recess)

7 (Continued on next page)

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8657KAR4

Riley - cross

1

AFTERNOON SESSION

2

2:05 p.m.

3

(Jury not present)

4

MR. KWOK: Your Honor, may we just raise one quick

5

issue with the court --

6

THE COURT: Yes.

7

MR. KWOK: -- before we call in the jury? I believe

8

the witness just now was referring to some work papers or other

9

materials that she used to assist her in conducting her audit.

10

I believe she is referring to that box of documents there which

11

we just got on Monday. It looks like materials that she

12

gathered to assist her in her work. We haven't looked at it.

13

Defense hasn't looked at it. But if she is referring to and if

14

she wants to look at that to assist her, I was wondering if

15

anyone had any objection to give that to the witness.

16

MR. RUBINSTEIN: Judge, I suggested to Mr. Kwok that I

17

would have no problem if she reviewed it and showed us which

18

document she was going to rely upon. I don't want to have

19

another 2000 situation.

20

THE COURT: Do you want to recall her and have her

21

come back, have another witness? The jury is already inquiring

22

about where we are in this case, how many more witnesses, how

23

long.

24

MR. KWOK: We can take that out of order.

25

THE COURT: Well, both lawyers have to agree.

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8657KAR4 Riley - cross

1 MR. KWOK: We have our next witness here who is Lee  
2 Gurfein. We can take him first, and in the meantime we can  
3 have the prior witness review the box of documents she was  
4 referring to.

5 MR. RUBINSTEIN: It sounds all right. I am just going  
6 to use the facilities for a second.

7 THE COURT: Let's call the jury in.

8 (Continued on next page)

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8657KAR4 Riley - cross

1 (Jury present)

2 THE COURT: Ladies and gentlemen, Ms. Riley wants to  
3 review her personal file in order to give you an answer to the  
4 question that was pending, so she is subject to recall for that  
5 question and continued cross-examination. In order to save  
6 time, we have another witness.

7 Will the clerk swear in the witness, please.

8 ELISHA GURFEIN,

9 called as a witness by the government,

10 having been duly sworn, testified as follows:

11 DEPUTY COURT CLERK: State your name, spell your first  
12 and your last name slowly for the record, please.

13 THE WITNESS: Elisha Gurfein, E-L-I-S-H-A. Last name  
14 G-U-R-F-E-I-N.

15 THE COURT: Please proceed, Mr. Everdell.

16 DIRECT EXAMINATION

17 BY MR. EVERDELL:

18 Q. Good afternoon, Mr. Gurfein.

19 A. Good afternoon.

20 Q. Where do you work?

21 A. I currently work at New York University and William  
22 Patterson University.

23 Q. What do you do at those universities?

24 A. I teach.

25 Q. What do you teach?

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8657KAR4

Gurfein - direct

1 A. I teach economics and finance at William Patterson, and I  
2 teach courses on natural resources at New York University.

3 Q. How long have you taught at those universities?

4 A. For a few years.

5 Q. What did you do before you were a teacher?

6 A. I had a company of my own in commodity trading.

7 Q. How long did you do commodities trading?

8 A. Oh, with my own company about 20 years and before that for  
9 ten.

10 Q. And before you were a commodities trader, what did you do?

11 A. I worked for the defense industry. I worked for a company.  
12 The name of the company was Furk & Elmer.

13 Q. What did you do for that company?

14 A. I was involved in getting -- pursuing government contracts  
15 for the company.

16 Q. How long did you do that for?

17 A. Ten years.

18 Q. What is your educational background?

19 A. I have a bachelor's degree in mathematics, and I have an  
20 MBA with a specialty in finance.

21 Q. And you mentioned government contracts. Could you explain  
22 that a little bit more.

23 A. Well, I was involved in trying to obtain government  
24 contracts for the company, but mostly the Defense Department  
25 and other agencies of the government.

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8657KAR4

Gurfein - direct

1 Q. Mr. Gurfein, did there come a time when you met a man named  
2 Daniel Karron?

3 A. Yes.

4 Q. Do you see Mr. Karron in the courtroom today?

5 A. Yes.

6 Q. Could you please point him out and describe an article of  
7 clothing.

8 A. He is sitting in the courtroom with a plaid shirt.

9 MR. EVERDELL: Let the record indicate that he has  
10 identified the defendant.

11 THE COURT: The record will so indicated.

12 Q. How did you first meet the defendant?

13 A. A mutual acquaintance some time back, probably in 2000  
14 roughly, I'm not sure.

15 Q. Was that the first time you met him?

16 A. Yes.

17 Q. Did there come another time when you met him?

18 A. Yes.

19 Q. When was that roughly?

20 A. In the spring or early summer of 2001.

21 Q. And what was the reason for that second meeting?

22 A. Dr. Karron told me that he was going to pursue a grant from  
23 the Department of Commerce and that he indicated to me that  
24 because I had background in government contracts and in  
25 business, he asked me to help him write that proposal.

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Gurfein - direct

1 Q. And was he applying for the grant on behalf of himself or a  
2 company?

3 A. On behalf of a company.

4 Q. What company was that?

5 A. CASI.

6 Q. What's CASI stand for?

7 A. Computer Aided Surgery, Inc.

8 Q. And what was the defendant's position at CASI?

9 A. I believe he was the owner and president.

10 Q. What grant was he applying for?

11 A. He was applying for an ATP grant with NIST.

12 Q. Do you recall what NIST is?

13 A. The National Institute of Standards and Technology.

14 Q. And what was your understanding of why the defendant asked  
15 you to help with the grant writing proposal?

16 A. Because of my familiarity with government contracting and  
17 with writing proposals for government contracts.

18 Q. Did you and the defendant discuss whether you would have  
19 any continuing role -- oh, sorry.

20 Did you two discuss what your role with the company  
21 would be if you were to receive a grant?

22 A. Yes.

23 Q. What did you discuss?

24 A. I was to be the business manager in the event of an award.

25 Q. And what would the business manager do?

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8657KAR4

Gurfein - direct

- 1 A. Basically be responsible for all nontechnical issues.
- 2 Q. Would those include budgeting issues?
- 3 A. The purchasing of equipment, hiring of people, the
- 4 budgeting, various other financial matters.
- 5 Q. Were you going to have any other role with CASI besides
- 6 managing the grant funds?
- 7 A. Yes, I was to be attempting to obtain additional funds for
- 8 CASI that would be supplemental to the funds coming from NIST.
- 9 Q. Additional funds?
- 10 A. Yes.
- 11 Q. And how much of your time was going to be spent on
- 12 nonfundraising?
- 13 A. Well, 75 percent was to be for CASI directly on the grant,
- 14 and 25 percent was to be for other fundraising, attempting to
- 15 get more funds, which was part of the grants requirement, by
- 16 the way.
- 17 Q. How long did the grant writing process take, the proposal
- 18 writing process?
- 19 A. Several months. I can't remember exactly, but several
- 20 months.
- 21 Q. During that time did you become familiar with the financial
- 22 terms of the grant and what constituted proper and improper
- 23 expenditures?
- 24 A. Yes.
- 25 Q. How did you do that?

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8657KAR4

Gurfein - direct

1 A. Well, the package that we received from NIST spelled out  
2 the various requirements and the qualifications of the grant.

3 Q. Was that the proposer's package?

4 A. Yes, the proposer's package, correct.

5 Q. And did you review those materials during the time of the  
6 grant writing process?

7 A. Yes.

8 Q. And what did those materials say about allowable versus  
9 unallowable costs?

10 A. Well, it defined what was allowed and what would not be  
11 allowed in working on the grant.

12 Q. What sorts of things were those?

13 A. Well, it indicated that all direct costs would be allowed  
14 pretty much, but there were certain items that were not to be  
15 allowed like rent, utilities, accounting, legal, others I can't  
16 remember.

17 Q. Did you ever discuss these rules with Dr. Karron while you  
18 were preparing the proposal?

19 A. Yes.

20 Q. How many times would you discuss these spending rules?

21 A. At various times, numerous times, but at various times  
22 under different conditions or whatever particular item we were  
23 discussing.

24 Q. Did you discuss any particular costs with the defendant  
25 during that period?

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8657KAR4

Gurfein - direct

1 A. Yes. We discussed at the time of the writing the proposal  
2 the writing costs, the various costs associated with that.

3 Q. Can you be more specific?

4 A. Well, I mean there were various costs that we had. In  
5 particular, there were costs for travel to Gaithersburg where  
6 NIST was located, there were some host travel costs, there were  
7 motels whatever, food, whatever we expended that way, which  
8 actually at the time I was laying out that money. And Dr.  
9 Karron and I discussed that.

10 Q. You had some discussions about those costs?

11 A. Yeah.

12 Q. What was the nature of those discussions?

13 A. Dr. Karron said we will try and see if we can get those  
14 things paid, and you will get your money back and so forth.

15 Q. What if anything did you say to him?

16 A. I said, you know, they're not allowable, those costs are  
17 not allowable, so, you know, let's not worry about it. Because  
18 there wasn't that much money to begin with, but  
19 notwithstanding, they weren't allowed.

20 Q. All right. Mr. Gurfein, did CASI eventually receive an ATP  
21 grant.

22 A. Yes.

23 Q. And how much money was authorized?

24 A. My memory says \$2.1 million, but I could be off by a little  
25 bit.

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8657KAR4

Gurfein - direct

- 1 Q. And how was that money going to be disbursed?
- 2 A. In progress payments over a three-year period.
- 3 Q. Did you in fact have any continuing involvement with CASI
- 4 after the grant was awarded?
- 5 A. Yes.
- 6 Q. What was that involvement?
- 7 A. I was taken on as the business manager.
- 8 Q. How long were you the business manager?
- 9 A. For one year.
- 10 Q. Starting when and ending when?
- 11 A. Starting October 1, 2001, ending September 30, 2002.
- 12 Q. Were you paid anything for this job?
- 13 A. Yes.
- 14 Q. How much were you paid?
- 15 A. I was paid \$100,000.
- 16 Q. Mr. Gurfein, did there come a time when you met with people
- 17 at NIST after the grant was awarded to discuss the grant?
- 18 A. Yes.
- 19 Q. About when was that?
- 20 A. Approximately a month or so after the award.
- 21 Q. When was the award?
- 22 A. The award was effective October 1, 2001. We were advised
- 23 of it on October 4, 2001.
- 24 THE COURT: For the \$100,000, was that a full-time
- 25 job?

8657KAR4

Gurfein - direct

1 THE WITNESS: The \$100,000 was for 75 percent of my  
2 time.

3 THE COURT: So, you spent 75 percent on businesses  
4 other than CASI, is that correct? I mean 25 percent --

5 THE WITNESS: Yes.

6 THE COURT: -- on businesses of yours other than CASI.

7 THE WITNESS: Yes, sir. But the 25 percent was also  
8 on CASI's behalf --

9 THE COURT: Yes.

10 THE WITNESS: -- in pursuing other funds.

11 THE COURT: I see. All right. Sorry, Mr. Everdell.

12 MR. EVERDELL: That's all right, your Honor.

13 Q. So, you mentioned the meeting you had with the NIST people  
14 after the grant was awarded.

15 A. Sorry?

16 Q. You mentioned a meeting you had with NIST people after the  
17 grant was awarded.

18 A. Yes.

19 Q. About when did that take place again?

20 A. About a month or so, maybe a little more than a month after  
21 the award.

22 Q. Did that meeting have a name in particular?

23 A. That was referred to as a kick-off meeting.

24 Q. What was the kick-off meeting?

25 A. Well, it was a meeting to essentially restate the rules,

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8657KAR4

Gurfein - direct

1 the ground rules, what was expected of us, what that agency was  
2 all about, namely the NIST agency, what the reporting of the  
3 funding would be, what the reporting of progress would be, what  
4 was allowed, what was not allowed, under what conditions would  
5 we have to apply for a change to the budget that was approved.

6 Q. And who attended this meeting from CASI?

7 A. Dr. Karron and I attended that meeting.

8 Q. And who attended from NIST?

9 A. Well, Hope Snowden, who was the grant administrator  
10 attended, as did Jayne Orthwein and B.J. Lide, and there might  
11 have been some other people. I think maybe Marilyn Goldstein,  
12 and I think even the director might have popped in for a little  
13 bit, Mark Stanley. I remember shaking his hand. That's all I  
14 remember.

15 Q. Those other people that you mentioned -- Hope Snowden,  
16 Jayne Orthwein, B.J. Lide -- who are they?

17 A. Hope Snowden was a grant administrator.

18 Q. Was she on this particular grant with CASI?

19 A. Yes, yes. B.J. and Jayne were supervisory management type  
20 persons who were more involved in the technical aspects, as  
21 well as the business but in the overall aspects of the grant.

22 Q. And what happened at the kick-off meeting?

23 A. How do you mean?

24 Q. Did the people at NIST have any discussions with you at  
25 that meeting?

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8657KAR4

Gurfein - direct

- 1 A. Yes, they told us what they expected of us.
- 2 Q. And how did they impart that information to you?
- 3 A. There was a presentation made to us.
- 4 Q. I want you to take a look at what's already in evidence as
- 5 Government Exhibit 4, which in the folder in front of you, one
- 6 of those two folders.
- 7 A. Yeah.
- 8 Q. Display the first page.
- 9 A. I see it.
- 10 Q. Do you recognize what that is?
- 11 A. Yes.
- 12 Q. What is that?
- 13 A. That was part of the presentation made to us at the
- 14 kick-off meeting.
- 15 Q. What did that presentation involve?
- 16 A. That presentation involved a statement of what the ATP
- 17 program was and what our responsibilities would be in reporting
- 18 and so forth.
- 19 Q. What if anything were you told about the responsibilities
- 20 concerning the budget?
- 21 A. With respect to the budget?
- 22 Q. Yes.
- 23 A. Well, one of the things we talked about was if we were more
- 24 than a certain percentage from the budgeted numbers, then we
- 25 had to apply for permission to do that.

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865ZKAR5

Gurfein - direct

1 BY MR. EVERDELL:

2 Q. And how did that permission come?

3 A. That would be in writing.

4 Q. What, if anything, were you told about spending outside the  
5 budget?

6 A. That it could be allowed, but it would have to be approved.

7 Q. What about direct versus indirect costs, were you told  
8 anything about that?

9 A. Right. I mean we were able pretty much to spend on  
10 indirect -- I'm sorry -- on direct costs in a most general way,  
11 but indirect costs were generally not allowed.

12 Q. What were those things covered at this meeting?

13 A. Well, again, the rent, the utilities, accounting, legal,  
14 maybe some other items. I can't recall.

15 Q. Now, around the time when the grant was awarded and the  
16 kickoff meeting occurred, did you have any discussions with Dr.  
17 Karron about any particular expenditures?

18 A. Well, again leading up to the award, we had discussed  
19 various of those items that were not allowed. Again, we  
20 discussed the proposal writing costs.

21 Q. What exactly did you discuss about?

22 A. Well, whether they would be allowed and -- you know, it was  
23 I thought pretty clear that we weren't allowed, but he said  
24 maybe we'll get them allowed. But I'm not sure how that was  
25 going to happen.

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865ZKAR5

Gurfein - direct

1 Q. To your knowledge, were any of those preproposal costs ever  
2 approved by NIST people?

3 A. Not to my knowledge.

4 Q. What other specific expenditures did you discuss with the  
5 defendant around this time when the grant was awarded?

6 A. Well, after the award, we discussed rent and utilities and  
7 legal and accounting.

8 Q. Let's talk about rents and utilities for a moment. What  
9 was the nature of your discussions about rent and utilities?

10 A. Well, we had, in the proposal, and as approved in the  
11 grant, we had indicated that we were going to be involved with  
12 the City University at Fifth Avenue and 34th Street with the  
13 graduate center there, the computer science part of it, where  
14 we would have a facility there, and that facility would be a  
15 company with some support staff from graduate students or  
16 whatever, who were in the computer science area.

17 Q. What happened with respect to that facility?

18 A. Well, it was decided that we would not be using that  
19 facility.

20 Q. Why not?

21 A. I think Dr. Karron had indicated that the overhead rates  
22 for the people there was high, and that it was something that  
23 would not be desirable.

24 Q. So where did CASI set up its business location?

25 A. We set up, basically, in Dr. Karron's apartment.

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Gurfein - direct

1 Q. And what, if any, discussions did you have with the  
2 defendant about rent and utilities with respect to the business  
3 space of CASI?

4 A. Well, yeah, he felt that -- I mean, he indicated to me that  
5 the rent should be paid to him by CASI, because that's where we  
6 were doing all the work, and it was essentially an office  
7 laboratory situation.

8 Q. This was rent from CASI to the defendant?

9 A. From CASI to the defendant, yes.

10 Q. And when the defendant told you this, what, if anything,  
11 was your reaction?

12 A. Well, it was clear that the rules, or the guidelines given  
13 to us by the people at NIST said no, that's -- that was not  
14 allowed.

15 Q. And what, if anything, did the defendant respond?

16 A. Well, he asked me to see if we can get it approved. So I  
17 wound up calling Hope Snowden at NIST and asking her if it  
18 could be approved.

19 Q. What, if anything, was her response?

20 A. She said no.

21 Q. And what did you do after you heard no from Hope Snowden?

22 A. I reported to Dr. Karron. And he said, well, we talked  
23 about it and he said, well, why don't you go back and try  
24 again. But under the idea that this is a one grant company,  
25 and so it's clear that everything we do here is for this grant

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Gurfein - direct

1 and there were no other funds, and so that there's no other  
2 activity at the moment. So that we could simply -- you know,  
3 it would be, as he expressed it, appropriate for us to get paid  
4 rent for that facility.

5 Q. And did you, in fact, call Hope Snowden again?

6 A. Yes, I did.

7 Q. And did you ask her that question?

8 A. Yes, I did.

9 Q. That way?

10 A. With regard, with regard to it being a one grant operation,  
11 yes.

12 Q. And what was her response?

13 A. She said no, we can't -- we don't approve that.

14 Q. And what, if anything, did you do with that response?

15 A. I told it to Dr. Karron.

16 Q. And what was his response?

17 A. I don't know. I think he was a little none plused by it, I  
18 don't know exactly. For that moment we dropped it at the  
19 moment at that point.

20 Q. About how many times did you speak to Hope Snowden about  
21 this issue of rent?

22 A. Well, certainly twice, maybe more, but certainly twice.

23 Q. And did you -- did Hope Snowden ever tell you that rent was  
24 an allowable expense?

25 A. No.

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Gurfein - direct

1 Q. Did you have any other discussions with Hope Snowden about  
2 other expense?

3 A. Yes. We discussed other expenses. I think I probably  
4 discussed the proposal costs expense and utilities. I think we  
5 discussed again similar to the rent discussion.

6 THE COURT: Did you ever talk to anyone besides Hope  
7 Snowden about these this rent and utilities?

8 THE WITNESS: It's possible. I might've discussed --  
9 I might have called her supervisor, Marilyn Goldstein, on a few  
10 occasions.

11 THE COURT: And did you get a -- what answer did you  
12 get?

13 THE WITNESS: Essentially, no.

14 THE COURT: All right.

15 Q. And about how often did you call Hope Snowden and these  
16 other people you mentioned?

17 A. Well, at the beginning of the grant period that I was  
18 there, I would call her two times a week or so. As time went  
19 on, I called her maybe two times a month.

20 Q. All right. Mr. Gerfein, do you know, approximately, when  
21 CASI received its first installment of ATP grant money?

22 A. I've been trying to figure that out. But I know it was  
23 very early. It was not very much after the notice of award.  
24 The notice of award was October 4th. I keep thinking it was  
25 right after that, but I'm not sure.

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Gurfein - direct

1 Q. Do you recall how much was transferred into the CASI bank  
2 account?

3 A. Yes. \$150,000.

4 Q. And where did that money go?

5 A. That money went into a CASI general account of some kind.

6 Q. Did you --

7 A. At Chase Bank.

8 Q. I'm sorry?

9 A. It was at Chase Bank, I recall that.

10 Q. Did you ever have any discussions with the defendant about  
11 that initial transfer of \$150,000?

12 A. Yes. He, he -- we had applied for, I believe, or we had to  
13 apply for it, and I think with happiness he told me one morning  
14 when I arrived at his apartment that the money came in, the  
15 150,000 came in. And in the same sentence I recall he said,  
16 and I've transferred \$75,000 out of the account.

17 Q. Did he say why he did that?

18 A. Yes. He said he had some personal obligations to his  
19 family, money owed to his family, and he said that he had  
20 credit card payments to make.

21 Q. With respect to his obligations to his family that you  
22 mentioned, did you ever have any other discussions with him  
23 about that topic?

24 A. Well, I mean in the course of writing the proposal, he had  
25 allowed that he had not had a -- been employed in any way, nor

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Gurfein - direct

1 had any other grant money for sometime, and so that he had to  
2 resort to credit cards and to family help.

3 Q. And what in particular did you -- did he say what he was  
4 spending the credit card money on?

5 A. Well, my sense was that from what the discussions were was  
6 that he was spending it on just living. He said he had to  
7 live, and so he used his credit cards to live.

8 Q. When you heard from the defendant that he had transferred  
9 \$75,000 out of the \$150,000, what, if anything, did you say?

10 A. I told him he couldn't do that.

11 Q. And what was the defendant's response?

12 A. He said, I have to do it.

13 Q. Did he expand on that?

14 A. Well, he said he had no choice; he had to get rid of those  
15 debts he had and he was taking those funds at the get --  
16 initially, he had to just take those funds immediately.

17 Q. Did you have any other discussions with the defendant about  
18 where the grant money was being deposited?

19 A. Yes.

20 Q. What were those discussions?

21 A. Well, I told him that we had to open up a separate account  
22 for the grant so that we don't have it mixed up with any other  
23 activities of CASI, if there were any.

24 Q. And what was the defendant's response to that?

25 A. Well, at first he rejected the idea, I think saying that it

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Gurfein - direct

1 was -- it would just cost too much to open up another account.  
2 But I didn't -- I didn't understand what that meant about the  
3 cost would be so great. But I told him it was a requirement of  
4 the grant that we had to have a separate account.

5 Q. And was a separate account eventually opened?

6 A. Yes.

7 Q. Mr. Gerfein, when you accepted the job at CASI as business  
8 manager, what was your understanding about who would have the  
9 authority to sign checks for the company?

10 A. Our initial discussions were that I was going to have sole  
11 responsibility for signing checks. I told him that, look,  
12 that's okay, but this is your company and really there should  
13 be dual signature requirement for most checks. And we agreed  
14 that there would be dual signature responsibility, but anything  
15 under \$250 could be signed by one person.

16 Q. Is this in fact that arrangement you just described, is  
17 that in fact what happened after the grant was awarded?

18 A. No.

19 Q. How did it work in practice after the grant was awarded?

20 A. Within one week exactly on October 11th, Dr. Karron sent a  
21 note to Hope Snowden saying that, while I had administrative  
22 responsibility, I had no signature or officer responsibility at  
23 CASI.

24 Q. And what did you understand that to mean?

25 A. That means that I was stripped of my ability to control the

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Gurfein - direct

1 business as I was told I would have.

2 Q. Take a look at Government's exhibit 21 in the other folder  
3 in front of you. Could we display that on the screen, page  
4 three. It's also in the jury binders.

5 A. Uh-huh. Yes.

6 Q. You see that document?

7 THE COURT: It's a little hard to see, but can you  
8 read it?

9 THE WITNESS: Yes.

10 THE COURT: I can't, I can't read it.

11 THE WITNESS: Here's my copy.

12 THE DEPUTY CLERK: Judge, he has a copy.

13 THE COURT: All right. He was looking up there, so I  
14 was --

15 Q. Actually, he, if you could blowup exactly what you blew up.

16 Mr. Gerfein, do you see that document?

17 A. Yes.

18 Q. What is that document?

19 A. That document is the letter that Dr. Karron sent to Hope  
20 Snowden dated October 11th, 2001 and indicating that I only had  
21 the administrator responsibility, but not the signature  
22 authority. And it says here, and is not authorized to sign for  
23 the corporation.

24 Q. Where do you see that?

25 A. From the third -- on the right side, third line from the

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Gurfein - direct

1 bottom.

2 Q. And you see the final sentence which says, the  
3 authorization for Mr. Gerfein to commit the corporation will be  
4 made by separate letter authorization if the need arises?

5 A. Correct. I see that.

6 Q. Were you ever given signatory authority for the company  
7 while you were working at CASI?

8 A. No.

9 Q. And what's the date on this letter?

10 A. I'm sorry?

11 Q. What's the date on this letter?

12 A. The date on the letter above, October 11th -- right there,  
13 yeah.

14 Q. And about how long after the grant was awarded was that  
15 letter dated?

16 A. It's dated -- well the grant was -- notification of award  
17 was October 4th, and this letter is dated October 11th. So  
18 it's exactly one week after the notice of award.

19 Q. All right. Mr. Gerfein, did you have any further  
20 discussions with the defendant about spending grant money after  
21 that letter was submitted?

22 A. About spending grant money?

23 Q. About particular expenditures?

24 A. Sure, I mean we discussed various things that -- I mean Dr.  
25 Karron kind of liked equipment. I mean he --

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865ZKAR5

Gurfein - direct

1 Q. Why did you discuss the equipment discussions you had?

2 A. In particular, we discussed -- there were many items of  
3 discussion, but we discussed some monitors that he bought that  
4 were very expensive. I mean as monitors go, I think these  
5 were, if I remember correctly, a couple thousand dollars a  
6 piece. They were large, attractive, but I didn't think they  
7 were necessary, and they were not part --

8 MR. RUBINSTEIN: Objection, move to strike.

9 A. They were not part of the grant.

10 MR. RUBINSTEIN: I move to strike what he thought.

11 THE WITNESS: I'm sorry.

12 THE COURT: Objection sustained, I guess.

13 Q. Are you --

14 THE COURT: As to what he thought. You said you  
15 thought that you told him they were not part of the grant.

16 THE WITNESS: Yes, sir.

17 THE COURT: Go ahead, what. Did you tell him anything  
18 else?

19 Q. I'm sorry, Mr. Gerfein, you mentioned monitors in  
20 particular?

21 A. Right.

22 Q. Is there any other pieces of equipment?

23 A. They were not part of the grant. Also, the point they were  
24 not part of approved grant.

25 Q. All right, let's -- what, if any, discussions did you have

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865ZKAR5

Gurfein - direct

1 with defendant about these pieces of equipment not being part  
2 of the grant?

3 A. Well, that, you know, he couldn't just buy anything he  
4 wanted; that he had to do things that were part of the grant.  
5 If he wanted to get something that was not part of the grant,  
6 he would have to apply for a written approval. And his  
7 response to me was I'm the PI, meaning I'm the principal  
8 investigator, and I can do anything I want. I said, you can't  
9 do anything you want. And that went on and on. That, that  
10 interchange took place a number of times.

11 Q. Did you approve or disapprove yourself of these  
12 expenditures?

13 MR. RUBINSTEIN: Objection, your Honor.

14 THE COURT: Objection sustained. As I understood it,  
15 his testimony is that he didn't have approval authority after  
16 October 11th.

17 MR. EVERDELL: I'm sorry, your Honor, I just meant not  
18 with respect to your approval, signatory authority, but did you  
19 think that these expenditures --

20 THE COURT: The question is whether they came within  
21 the grant or not, not whether he personally approved things.  
22 This isn't a trial in connection with --

23 MR. EVERDELL: Certainly, your Honor.

24 THE COURT: -- personal approvals or disapprovals.

25 Q. When you said that these were not part of the grant, these

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865ZKAR5

Gurfein - direct

1 expenditures that you were talking to the defendant about, what  
2 did you mean by that?

3 A. Well, we had included in our proposal various figures,  
4 including figures for equipment, and the equipment was  
5 delineated, and the items that we just talked about were not  
6 included. And when those items were being purchased that were  
7 not required by the grant, or not approved by the grant, I  
8 should say, then they really should not have been bought.

9 Q. Did you discuss this with the defendant?

10 A. Yes, but --

11 Q. What was his response?

12 A. Well, first of all, it was always after the fact that I  
13 found out that these things were bought, because I didn't have  
14 anyway of stopping it. And so I'd come in there one day as an  
15 example, and there would be this movie sized theater -- these  
16 theater size movie screen going up, projection screen probably  
17 as big as that, maybe bigger, don't know. And I said to him,  
18 what is that all about? And he said, well, we need that. And  
19 I said, for what? And I just didn't understand why we'd have  
20 to spend another few thousand dollars when we --

21 MR. RUBINSTEIN: Objection to what -- his feelings.

22 THE COURT: The jury is instructed to disregard the  
23 last three or four words. What the issue is that, was that  
24 amongst the equipment that was delineated in the grant?

25 THE WITNESS: It is not. That equipment was not

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Gurfein - direct

1 included in the grant.

2 Q. What was the defendant's response when you would talk to  
3 him about these non-delineated equipment pieces?

4 A. He said, we needed it.

5 Q. Do you know what funds were used to buy these items,  
6 equipment?

7 A. The only funds we had were funds from NIST, ATP funds. So  
8 there were no other funds that I knew about that came into the  
9 company.

10 Q. How do you know the only funds you had were ATP funds?

11 A. Well, because I had been trying to get other funds and I  
12 had not been successful in doing that.

13 THE COURT: Did you review -- were you in charge of  
14 the books and records?

15 THE WITNESS: Essentially not. I mean, I should have  
16 been, but I had no control over it.

17 THE COURT: What about the bank account?

18 THE WITNESS: Same.

19 THE COURT: You didn't --

20 THE WITNESS: I had no control over it.

21 THE COURT: You didn't review the bank accounts?

22 THE WITNESS: I did, but I had no control over it.

23 Q. Did you have any discussions with the defendant on the  
24 subject of fringe benefits for medical expenses?

25 A. Yes.

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865ZKAR5

Gurfein - direct

1 Q. And what were the nature of those discussions?

2 A. The nature of those discussions were that the, the figure  
3 of 34 percent of an employee's gross salary was allowable for  
4 medical and other expenses like that, fringe benefits. And Dr.  
5 Karron was of the opinion that, because he told me so, that if  
6 it was 34 percent of the total payroll, that would be okay.

7 Q. What do you mean, if it was 34 percent of the total?

8 A. If we did not exceed 34 percent of the entire payroll as  
9 opposed to just 34 percent of each individual, that would be  
10 okay. So that if one person had, say, 20 percent and one  
11 person had 50 percent, the average would be like 35 percent or  
12 something close to that, so that would be okay.

13 THE COURT: Did the company have a benefit plan? Did  
14 the company have a benefit plan?

15 THE WITNESS: Not that I ever saw.

16 THE COURT: And how were fringe benefits administered?

17 THE WITNESS: They were very loosely arranged at that  
18 time.

19 THE COURT: What do you mean by that?

20 THE WITNESS: Well, there was, there was an assignment  
21 given to an attorney to generate a benefit policy, but that  
22 never happened while I was there.

23 THE COURT: But how -- you said they were loosely  
24 administered. Someone had to document something like that.

25 THE WITNESS: Right.

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865ZKAR5

Gurfein - direct

1 THE COURT: What would happen?

2 THE WITNESS: Doctor's bill, if the person would have  
3 insurance or the bill would be submitted, but basically the  
4 company paid for insurance in my case.

5 THE COURT: Was there insurance; there was health  
6 insurance?

7 THE WITNESS: There was no -- to my knowledge, there  
8 might have been a policy, but I can't recall. I do know that  
9 in my case it was handled a little bit differently, but still  
10 it was, there was no formal policy.

11 THE COURT: What did they do, pay them as the bills  
12 came in?

13 THE WITNESS: I was covered by -- I was covered by an  
14 insurance policy. I think Dr. Karron had one too. But I think  
15 there were other bills that he might have had, as I recall,  
16 that were paid possibly directly. I really don't know.

17 THE COURT: So that's what you mean by "loosely"  
18 administered.

19 THE WITNESS: Yes.

20 THE COURT: I see.

21 BY MR. EVERDELL:

22 Q. Mr. Gerfein, did the defendant have any health expenditures  
23 that you're aware about during this period you worked with  
24 CASI?

25 A. Yes, he had -- I think he had a lot of health expenditures.

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Gurfein - direct

1 In particular, I remember he had dental expenditures.

2 Q. How do you know he had dental expenditures?

3 A. Well, often times he asked me to pick him up at the dentist  
4 on my way into the office.

5 Q. And do you know what kind of dental procedures he was  
6 having?

7 A. In particular, he had indicated that he had a jaw  
8 reconstruction activity going on with the dentist.

9 Q. And did you have any sense about why the defendant was  
10 having his jaw --

11 A. Based on his discussion with me, and some other people who  
12 had such procedure, and that they were getting a sex change  
13 operation, it became clear that that jaw reconstruction was for  
14 a sex change operation.

15 Q. And just to repeat, did you see any written plan for the  
16 employees at CASI for health benefits?

17 THE COURT: Wait. I don't understand. A dentist  
18 can't -- doesn't do a sex change operation.

19 THE WITNESS: Correct; yes, sir.

20 THE COURT: You picked him up at the dentist.

21 THE WITNESS: Right, but --

22 THE COURT: So all you know is that he had dental  
23 expenses.

24 THE WITNESS: Right. But based on his descriptions he  
25 made of some other people who he knew who had a similar

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865ZKAR5

Gurfein - direct

1 procedure, and that was as the cosmetics for in contemplation  
2 of a sex change operation.

3 Q. All right. Mr. Gerfein, did you ever see a written plan in  
4 place for CASI for health expenditures?

5 A. I did not.

6 Q. Mr. Gerfein, when you had discussions with the defendant  
7 about spending, where would you have those conversations?

8 A. Well, typically we would leave the office, which was  
9 usually very noisy and poorly ventilated, and we'd go to a  
10 coffee shop, one of several coffee shops across the street.

11 Q. And when you had meetings with the defendant, would you  
12 schedule meetings or would you just show up?

13 A. Well, both. Sometimes I just show up and sometimes they  
14 were scheduled.

15 Q. When you did schedule meetings, did the defendant always  
16 attend your scheduled meetings?

17 A. Very often not.

18 Q. Can you expand on that?

19 A. Well, I would try to see him on various occasions having to  
20 do with budgetary things and other matters, and sometimes I'd  
21 show up at the appointed time, let's say 11:00 o'clock and he  
22 was either sleeping or he's in the gym or whatever, but very  
23 often he was not there.

24 Q. You say he was sleeping; how do you know he's sleeping?

25 THE COURT: I don't see the relevance of whether he's

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Gurfein - direct

1 sleeping or not, Mr. Everdell. You have to --

2 Q. As a --

3 MR. EVERDELL: Your Honor, if we could have a brief  
4 sidebar?

5 THE COURT: If you got -- all right, go ahead then.

6 MR. EVERDELL: All right.

7 THE COURT: You got a relevant point, but I just  
8 wanted to call your attention to the possible lack of  
9 relevance.

10 Q. How, if anything, did this, did these -- did the  
11 defendant's work habits impact your work?

12 MR. RUBINSTEIN: Objection, your Honor.

13 THE WITNESS: Very often it was difficult to --

14 MR. RUBINSTEIN: I have an objection.

15 THE COURT: I will allow the question.

16 Q. How, if any --

17 A. Well, very often I would try to meet with him and -- well,  
18 one time I had an appointment to see him on a Sunday evening  
19 'cause I could get his attention without interference, and I'd  
20 show up and I wait for an hour, and he didn't show up.

21 Q. Do you ever have any discussions with Dr. Karron about his  
22 work habits?

23 A. Yes, I did. I told him this is not just acceptable. I  
24 used to get frustrated just showing up time and time again, and  
25 he'd be out doing what he was doing.

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Gurfein - direct

1 Q. Mr. Gerfein do you know someone named Margaret Ferrand?

2 A. I know the name Margaret.

3 Q. Who is Margaret?

4 A. Margaret was a cleaning lady.

5 Q. And what did you -- oh, did you ever see her in the  
6 apartment, Margaret?

7 A. Sure.

8 Q. How often?

9 A. I would guess once a week, but I'm not really sure.

10 Q. And what was she doing when you saw her in the apartment?

11 A. She'd be cleaning dishes or toilets or, you know, whatever;  
12 dusting, whatever a cleaning lady does.

13 Q. Did you ever see Margaret doing any office work, aside from  
14 cleaning, while you were there?

15 A. Not when I was there.

16 MR. EVERDELL: One moment, your Honor.

17 Q. Mr. Gerfein, when did you terminate your employment at  
18 CASI?

19 A. I terminated my employment September 30th, 2002.

20 Q. Why did you leave after only one year?

21 A. Well, Dr. Karron said he couldn't afford to pay me the  
22 hundred thousand dollars a year. And he asked if I would stay  
23 on at \$50,000 a year. And it didn't take much time for me to  
24 know that I wouldn't stay there either way, at 100 or 50,  
25 because my mental health was more valuable than being part of

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Gurfein - direct

1 that operation.

2 MR. EVERDELL: Thank you. No further questions.

3 THE COURT: Mr. Rubinstein.

4 MR. RUBINSTEIN: Thank you, your Honor.

5 CROSS EXAMINATION

6 BY MR. RUBINSTEIN:

7 Q. In fact, Mr. Gurfein, you had a contract, did you not?

8 A. I did.

9 Q. And your contract was for one year, correct?

10 A. Correct.

11 Q. And at the end of the year were you offered a renewal of  
12 that contract?

13 A. No.

14 Q. You were a member of the board of directors, were you not?

15 A. For one month.

16 Q. And --

17 A. Approximately.

18 Q. Was that the first month?

19 A. That was -- no. It was sometime between July and August,  
20 something like that.

21 Q. July and August of 2002?

22 A. Correct.

23 Q. And were you an officer in the corporation?

24 A. For about that one month. I was made an officer of the  
25 corporation without my being told in advance, and I resigned

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Gurfein - cross

1 that within a month, roughly, of the time that I had that,  
2 while I that maintained my position as the business manager.

3 Q. You resigned as member of the board, correct?

4 A. Yes.

5 Q. Who else was on the board?

6 A. Dr. Karron, I think there was a Mr. Bernstein I believe who  
7 was an attorney, there was Abe Karron, who was Dr. Karron's  
8 brother. There were, there probably was one other person, I  
9 think possibly Frederica Miller attorney. I'm not sure. She  
10 might have been a member of the board as well.

11 Q. And these -- did you attend any board meetings?

12 A. That one. Oh, as a director or as a visitor?

13 Q. At any time?

14 A. I think I attended two board meetings in total, if I  
15 remember correctly.

16 Q. And where were the board meetings held?

17 A. They were held at the office of Mr. Bernstein.

18 Q. And what time of day or night?

19 A. I think probably in the evening.

20 Q. And you, when you worked at CASI, what were your work  
21 hours?

22 A. The work hours were pretty variable. They were up to me.  
23 And some days I worked at CASI's offices like three days a  
24 week, maybe four, maybe two, and the rest of the time I worked  
25 at home. But remember I was there on 75 percent of the time.

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Gurfein - cross

1 Q. When you came to the office, how late would you stay on a  
2 non-board member day?

3 A. It varied.

4 Q. Well, what was the latest that you ever stayed at the  
5 office when you were the -- you were the chief operating  
6 officer?

7 A. No, I was not.

8 Q. What was your title?

9 A. Business manager, I think.

10 Q. How late did you -- what's the latest you ever worked at  
11 CASI the year as the business manager?

12 A. Probably midnight.

13 Q. And how often did you do that?

14 A. I don't remember.

15 Q. More than once?

16 A. Oh, sure.

17 Q. And you were asked to invest money in CASI, were you not?

18 A. I was.

19 Q. You were asked to invest money by Dr. Karron's brother, Abe  
20 Karron, right?

21 A. It wasn't quite like you're saying.

22 Q. Well, were you asked to invest \$50,000?

23 A. That's correct.

24 Q. And when you were asked to invest, when was it?

25 THE COURT: Could we have a date, Mr. Rubinstein?

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Gurfein - cross

- 1 Q. Was that early on --
- 2 A. Yes.
- 3 Q. -- your employment, correct?
- 4 A. Correct.
- 5 Q. It was prior to the time that the letter was generated to
- 6 Marilyn Goldstein limiting your functions?
- 7 A. No, it was after that.
- 8 Q. When was it?
- 9 A. I don't know the date, but it was after that.
- 10 Q. Were you a signatory at one time on the checking accounts?
- 11 A. Was I a signatory on the checking account? Did I sign
- 12 paper, documents at Chase to do that at some point? I think I
- 13 did. Did I ever sign a check? No.
- 14 Q. How were the checks created?
- 15 A. How were they created?
- 16 Q. Yeah. You got paid, didn't you?
- 17 A. Yes.
- 18 Q. Paid every week, correct?
- 19 A. No.
- 20 Q. Got paid every two weeks?
- 21 A. No.
- 22 Q. How often you get paid?
- 23 A. Once a month.
- 24 Q. Each month?
- 25 A. Each month.

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Gurfein - cross

1 Q. Now, you told us about Dr. Karron in the first month of the  
2 grant he took \$75,000 for as a loan for his personal use,  
3 correct?

4 A. Correct.

5 Q. Now, he was earning \$175,000 for the year, correct?

6 A. Correct.

7 Q. And that comes out to about \$14,000 and change a month?

8 A. Correct.

9 Q. Did you know if Dr. Karron took a check, a paycheck in  
10 November of 2001?

11 A. I don't know.

12 Q. Do you know if he took a paycheck in December of 2001?

13 A. I don't know.

14 Q. Do you know if he got a paycheck in January of 2002?

15 A. I don't remember that.

16 Q. Isn't it a fact that the first paycheck that Dr. Karron got  
17 was in May of 2002?

18 A. I don't know that.

19 Q. Well, as the --

20 THE COURT: The jury is to draw no inferences.

21 Questions only are what is the evidence before you. Don't draw  
22 any inferences from the question.

23 Q. Now, there were a number of people who worked at CASI on  
24 this project, were there not?

25 A. Several, yes.

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Gurfein - cross

1 Q. And what was the original budget for salaries?

2 A. For what?

3 Q. For salaries, for total salaries?

4 A. I don't remember. I don't recall that offhand.

5 Q. Let me show you an exhibit to see if it refreshes your  
6 recollection?

7 THE COURT: What exhibit?

8 Q. Okay. After the initial budget was submitted, was there an  
9 amendment, a request for an amendment to the budget submitted?

10 A. I'm sorry, could you repeat that?

11 Q. Yeah. After the initial budget was submitted, you  
12 submitted a budget before you received the funds, correct?

13 A. Yes.

14 Q. And that was to get \$800,000 the first year, correct?

15 A. Correct.

16 Q. And after --

17 THE COURT: Total budget.

18 Q. For the first year?

19 A. I believe, I believe 800,000 sounds about right. It might  
20 have been a little bit more.

21 THE COURT: Budget. We're not talking salaries at  
22 this point. Budget.

23 MR. RUBINSTEIN: No, talking total budget.

24 A. Yes.

25 Q. The first year. And then the total you told us was for the

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Gurfein - cross

1 three years was about 2.1 million?

2 A. Correct.

3 Q. Now, in October did you file for a budget amendment, a  
4 revision early on?

5 A. Yes.

6 Q. And I turn your attention to exhibit -- do you have the  
7 exhibits in front of you, sir? Is there a book with exhibits  
8 there?

9 A. Which exhibit are you --

10 Q. I'm referring to exhibit 22.

11 A. I don't have such an exhibit.

12 MR. EVERDELL: One moment, your Honor.

13 MR. RUBINSTEIN: I'll give him my exhibit, your Honor.

14 MR. EVERDELL: Here.

15 Q. Mr. Gerfein --

16 THE COURT: The witness has been handed exhibit 22.

17 Q. Did you review that, sir?

18 A. Which piece of paper are you asking me to look at?

19 Q. The entire exhibit.

20 A. Okay. I, I have an idea what this is.

21 Q. Did you have discussions with people, either Hope Snowden  
22 or anybody at ATP about a revision in the budget?

23 A. About a provision in the budget?

24 Q. No, a revision?

25 A. Oh, yes. The chances are I did, although this was

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Gurfein - cross

1 submitted -- we did make a submission.

2 Q. And did you prepare the submission?

3 A. I believe I did. I can't be 100 percent sure. But if I  
4 did it, I did it with the Dr. Karron. I mean, we certainly  
5 discussed it.

6 Q. All right. And by looking at that document, does it  
7 refresh your recollection as to what the budget was for the  
8 first year?

9 A. Right. I see that.

10 Q. And there were submitted reasons for the request for  
11 revisions, correct?

12 A. Yes.

13 Q. As a matter of fact, this was the second revision for  
14 budget?

15 A. I don't recall that. I, I just don't recall which revision  
16 it was, if there was a first or second.

17 Q. Do you recall submitting a revision to change your name  
18 from Lee to Elisha?

19 A. If there was such changes, I do not remember it.

20 Q. Now, the salary -- did you understand, sir, as the business  
21 manager, that you did not need approval if you changed a  
22 category by 10 percent?

23 A. Within 10 percent.

24 Q. Of the grant?

25 A. Yes.

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Gurfein - cross

1 Q. So that you could add \$80,000 to a category as long as you  
2 took 80,000 away from that category, correct?

3 A. Um, that could be correct. I can't be sure 100 percent if  
4 that's correct.

5 Q. Now, you told us that you had health insurance. You  
6 actually had a contract, correct?

7 A. Yes.

8 Q. And did that provide for health benefits for you?

9 A. I think so, but I can't remember exactly. I don't have it  
10 in front of me.

11 Q. Do you recall who the lawyer was who you mentioned was  
12 contacted to develop a fringe benefit manual?

13 A. My best recollection --

14 THE COURT: Plan or manual?

15 Q. Plan or manual?

16 A. My best recollection was Frederica Miller.

17 Q. And do you know if Frederica Miller was paid anything to do  
18 this work?

19 A. I have no idea.

20 Q. Now, in addition to the -- your wife had separate coverage,  
21 did she not?

22 A. My wife had separate coverage, yes.

23 Q. And CASI reimbursed you for your wife's medical expense,  
24 right?

25 A. Not our medical expense, our insurance.

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Gurfein - cross

1 Q. What kind of insurance?

2 A. It was a group insurance, I think. It was our portion of  
3 the group insurance.

4 Q. Group insurance covering what?

5 A. Covering medical.

6 Q. And were you also on the medical plan that CASI had for its  
7 employees?

8 A. No.

9 THE COURT: Whose group medical were you talking  
10 about?

11 THE WITNESS: My wife's medical. My wife was part of  
12 a group, and so --

13 THE COURT: I see. Different, separate group?

14 THE WITNESS: Again, there was no -- I must make a  
15 point. There was no policy, and Dr. Karron said, okay, we'll  
16 just pay your medical insurance. And the way it was set up,  
17 that my wife would be covered under that as well.

18 Q. And there were fringe benefits provided for in your budget,  
19 were there not?

20 A. Correct.

21 Q. And how much were the fringe benefits provided for in the  
22 CASI budget?

23 A. I would have to look that up. I don't know that exactly.  
24 The fringe benefits were probably 34 percent of the total  
25 payroll. The payroll -- and that first year says here

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Gurfein - cross

1 \$325,000. So fringe benefits should have been 34 percent of  
2 whatever that number is, which should be something over  
3 \$100,000, I think.

4 Q. And do you see on --so that was -- did you argue with Dr.  
5 Karron as to whether or not you -- your wife should be  
6 reimbursed for your medical insurance?

7 A. Argue? No, there was no argument. He -- there was never  
8 an argument about that.

9 Q. Did you say to him, I don't think that's an allowable  
10 fringe benefit?

11 A. No.

12 Q. Did you think it was allowable?

13 A. Based on the, the loose policy that he had established, it  
14 was.

15 Q. What about ATP, did you think that his loose policy  
16 violated the ATP --

17 A. I'm not sure how. If it was for me, within 34 percent of  
18 my, of my gross pay, it was not violating, no.

19 Q. Was it -- did you know of any rule that suggested that the  
20 fringe benefit amount was related to an individual's gross pay?

21 A. Yes.

22 Q. Where, where is it that it's -- where is the document that  
23 suggests that fringe benefits are in direct proportion to one's  
24 salary?

25 A. As far as -- I remember reading that in the documents.

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Gurfein - cross

1 Q. You had that discussion with Dr. Karron, did you not?

2 A. Yes. Well, we discussed the subject in general, more with  
3 respect to his requirements for medical than mine. I was way  
4 within the 34 percent.

5 Q. And his view was that if you had fringe benefits for the  
6 company, whatever was utilized, as long as it was a fringe  
7 benefit, anybody could use it?

8 A. I don't understand your question.

9 Q. Did you have a discussion with Dr. Karron as to the use of  
10 fringe benefits?

11 A. Yes.

12 Q. And didn't he advise you that it was his understanding that  
13 fringe benefits -- that he could utilize up to whatever fringe  
14 benefit money was not used by other employees that was  
15 available for him?

16 A. He said that.

17 Q. And are you aware -- did you have anything to do with the  
18 quarterly financial statements?

19 A. Yes.

20 Q. Did you help prepare them?

21 A. Yes.

22 Q. Where did you get the numbers from to put into the  
23 quarterly financial statements?

24 A. Those numbers were the aggregate of what was in the monthly  
25 applications for, for the various progress payments. That's

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Gurfein - cross

1 where these numbers came from.

2 Q. Did they come from actual expenses?

3 A. No, they did not.

4 Q. And who determined that that was the proper numbers, those  
5 were the proper numbers to use?

6 A. Well, the first time we went in after Dr. Karron withdrew  
7 the \$75,000, and we had we had a discussion about that, about  
8 how that \$75,000, for example, could be applied to direct -- on  
9 the direct charges for the grant, which we couldn't possibly do  
10 because it wasn't -- I mean that money was not spent on the  
11 grant. So Dr. Karron said just, okay, make it that it works;  
12 make sure that, you know, you don't raise any red flags and  
13 just submit the numbers that will make it work. And that's  
14 what we did.

15 Q. You are aware, sir, that Dr. Karron paid back that \$75,000  
16 in that first year; you're aware of that?

17 A. I am. But it caused us great pain to have that \$75,000  
18 taken out, so at the end of every month we were down to almost  
19 zero on the bank account.

20 Q. And whenever you got down to zero, Dr. Karron would put his  
21 own money into the company, correct?

22 A. I don't know that.

23 Q. Well, how did you get above zero?

24 A. We got another progress payment.

25 Q. Did you get a personal loan from CASI during this period?

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Gurfein - cross

- 1 A. Did I get a personal loan?
- 2 Q. Yes.
- 3 A. Not to my knowledge.
- 4 Q. Did you get a personal loan from Dr. Karron during this
- 5 period?
- 6 A. I don't remember that.
- 7 Q. You also had a telephone installed in your house related to
- 8 CASI business with the ATP grant, did you not?
- 9 A. Correct.
- 10 Q. And that telephone was paid for by CASI?
- 11 A. Correct.
- 12 Q. And you used that phone strictly for company business?
- 13 A. Correct.
- 14 Q. Did you have a credit card to use for CASI?
- 15 A. I don't recall if I had a credit card. If I did, it was
- 16 hardly used. In fact, I think I gave it back to him. If I had
- 17 one, I gave it back to him.
- 18 Q. At what point?
- 19 A. Right away. I mean it was -- I, I, I can't remember the,
- 20 any credit card being of any substance.
- 21 Q. Did you call anybody at ATP to report that Dr. Karron had
- 22 borrowed \$75,000?
- 23 A. I did not.
- 24 Q. When you say that you were, the company was short money,
- 25 there was \$800,000 deposited by early October or by the middle

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Gurfein - cross

1 of October into an account for you to drawdown; is that  
2 correct?

3 A. Incorrect.

4 Q. Where was the money that was given by ATP, the \$800,000,  
5 how did that --

6 A. The \$800,000 came in pieces. The first piece was 150,000  
7 and every month in the first year after that it was \$60,000.  
8 We had to apply for that money each month.

9 Q. Are you aware that you could have applied for the first --  
10 in the first month for the whole \$800,000?

11 A. I was not aware of that.

12 Q. So if somebody from ATP had testified here at the trial,  
13 you were unaware of that, correct?

14 A. I'm unaware of that.

15 Q. You were present at -- on November 8th, 2001 at what's  
16 called a kickoff meeting?

17 A. Yes. Yes, I was.

18 Q. And you went over rules and regulations with the people --

19 A. Yes.

20 Q. -- at NIST?

21 A. Correct.

22 Q. And I think you told us that you met Mark Stanley there?

23 A. I think I shook hands with him at most.

24 Q. And did Dr. Karron know Mark Stanley?

25 A. Yes.

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Gurfein - cross

1 Q. And they had a cordial comfortable relationship?

2 MR. EVERDELL: Objection.

3 THE COURT: Do you know? Were you present? Do you  
4 remember any of their meetings before the grant?

5 THE WITNESS: No, I was not.

6 Q. Well, did Dr. Karron or you discuss these, this agreement  
7 agreements you had with him as to whether or not an expense,  
8 was a proper NIST expense, you had a number of these discusses,  
9 correct?

10 A. Yes.

11 Q. And did he advise you that he would get the approval  
12 because NIST loved him and he bought items before he asked or  
13 received approval from NIST?

14 A. I can't hear what you're saying.

15 Q. Did he tell you that --

16 THE COURT: You better get back to the microphone, Mr.  
17 Rubinstein, because I couldn't hear half that question.

18 MR. RUBINSTEIN: Sorry.

19 Q. When you questioned the propriety of certain expenditures  
20 by Dr. Karron, without prior approval, and in fact that Dr.  
21 Karron told you that he would get approval because NIST loved  
22 him?

23 A. Yes, he said that.

24 Q. Did you bill a, and be reimbursed for parking while you  
25 were a CASI employee?

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Gurfein - cross

1 A. Yes.

2 Q. And did you also bill for travel?

3 A. For mileage you mean?

4 Q. Yes.

5 A. I don't recall the mileage. I recall I think parking at  
6 the meter. Possibly tolls. I don't remember that. That's  
7 possible. But I don't recall mileage, although that's possible  
8 too.

9 Q. Do you recall receiving an e-mail from Dr. Karron  
10 requesting that you repay certain expenses that were not  
11 approved by ATP?

12 A. I don't recall such an e-mail.

13 (Continued on next page)

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